STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404
State House - Room H-4
(301) 269-2810

HARRY HUGHES
GOVERNOR

CORRECTED

Governor's Information Practices Commission

Minutes of Commission meeting-December 15, 1980

The Commission convened with all present except Mr. E. Roy Shawn, Mr. John E. Donahue, Ms. Florence B. Isbell, Mr. Albert J. Gardner, Jr., and Dr. Harriet Trader. The meeting began with an explanation of the Mileage Reimbursement Form by Mr. Dennis Hanratty.

Mr. Arthur Drea informed the members that he and Mr. Hanratty had met with Delegate Helen Koss, Chairperson of the House Constitutional and Administrative Law Committee,to discuss coordinating committees. Delegate Koss preferred holding separate House and Senate "pre-hearings" in the Fall of 1982. Mr. Drea stated that it had been agreed that any bill proposed in this session that impacted on the work of the Commission would be deferred and referred to the Commission. He enlisted the aid of Commission members in the review of proposals relating to the Commission's purpose. Delegate Kopp asked if the confidentiality of bill drafts would be covered by the Commission. The consensus of the members was that the issue would not be dealt with at the present time.

The remainder of the meeting was spent continuing the discussion of the document Mr. Hanratty had presented on December 1. Again Mr. Hanratty reiterated that the proposal was meant as a guide only and open to additions or deletions. Discussion ensued on the topic of Social Services. Delegate Nancy Kopp asked if general questions would be covered throughout; the members agreed that such questions would be included. The issue of Federal regulation and potential conflicts between State and Federal regulations was raised. Mr. Dennis Sweeney stated that this was usually covered by the provision "except as Federal law requires" in most documents. In addition to the questions posed under "Use" of Social Services information, Senator Timothy Hickman suggested the addition of questions concerning with whom the information is shared, for what purpose and under what authority. Mr. Robin Zee requested that #32 be changed to read "Are there opportunities for the objection to records" instead of "correction of records". Mr. Hanratty brought up the fact that he had identified only one section of the Annotated Code to date as having relevance to these questions. It was suggested that he contact Joel Rabin, Assistant Attorney General, who might have further references. The discussion of the topic was concluded with the statement that Social Services should also include confidentiality in the service sector-such as child abuse registries.

Mr. Hanratty discussed his findings on Criminal Justice. He noted that although this is a sensitive topic, there already exists significant protection of criminal justice records through various sections of the Annotated Code. He suggested that the Commission might want to focus on the issue of sealing versus purging. In the

A theme evident throughout questions was the disclosure of information by the Treasury Department to other Government agencies. Mr. Hanratty stated that the statutes are general and appear to allow disclosure. Other issues raised by members of the Commission were: who is chosen for audit, what criteria are used, and accountability for improper disclosure.

Senator Hickman inquired if anything had been done to ask agencies to submit information on their data practices to the Commission. It was decided that members of the Commission would be contacts for the agencies they represent. Letters would be sent to other agencies asking for a liaison from each. Mr. Hanratty could then meet with the points of contact and determine the difficulties involved in obtaining information. Senator Hickman suggested including a list of the information desired with the letter.

Mr. Drea stated that the tax issue would be summarized in the Interim Report. Mr. Hanratty asked for feedback on the goals of the Interim Report. The members of the Commission agreed that it should be privacy oriented. Mr. Drea added that no review of privacy is complete without an examination of the Public Information Act. Senator Hickman brought up the scheduled public hearings suggesting that a series of agency hearings be held separately, as it would be difficult to handle everyone at a public hearing.

Time did not permit a thorough discussion of the proposed schedule for the Commission throught 1982. The Commission did agree that the next meeting would be devoted to consideration of a draft of the Interim Report.

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GOVERNOR'S INFORMATION PRACTICES COMMISSION

INTERIM REPORT
January 1981

MEMBERS

Arthur S. Drea, Jr., Chairman
John A. Clinton
John E. Donahue
Albert J. Gardner, Jr.
Wayne Heckrotte
The Hon. Timothy R. Hickman
Florence B. Isbell
The Hon. Nancy Kopp
E. Roy Shawn
Dennis M. Sweeney
Harriet Trader
Donald Tynes, Sr.
Robin J. Zee

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STAFF

Dennis M. Hanratty, Executive Director
Thea Cunningham, Research Analyst

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I. INTRODUCTION

We exist today in an information society. The last three decades represented a veritable revolution in the acquisition and processing of information. Today, companies throughout the world rather routinely engage in transactions in a manner that would have been impossible before the 1950s. Individual citizens have benefited from this information expansion in incalculable ways.

In the midst of this revolution, however, a great many people have reservations about the information miracle. Increasingly, citizens are demanding that limitations be placed on the collection and uses of information by public and private organizations. There are frequent requests to limit the types of information that can be collected from individuals by organizations, to mandate organizations to collect information from the individual himself, and so forth. In a word, demands are made on government today to protect personal privacy.[1]

Privacy protection legislation has become important to so many citizens today because, as we have already noted, the character of our society has changed so much from the past. As the United States Privacy Protection Study Commission has recently observed, one hundred years ago our interactions with public and private organizations in society were not as commonplace as they are today.[2] Many people were self-employed, attained only lower-level education, and there was little contact with large agencies and the Federal Government. Records maintained on individuals were also minimal. The formal transactions conducted between one individual and other members of society were limited in scope. Face-to-face information exchanges provided the opportunity to divulge specific information and allowed for the correction of errors or misperceptions on the part of

others. In addition, information gathered was not extensive. Now, however, when transactions in almost every sphere of life require the divulgence of detailed personal information, the scenario has changed. Few individuals are able to obtain credit, insurance, and other necessities of modern living without the final determination being based on personal information.

Over the last decade, the concern of the American public about the potential abuse of personal information has also gradually increased. In the past, many employers collected extensive information on applicants and employees, including data relevant to hiring practices. Unfortunately, informal opinions, comments of supervisors and other non-related information were also often included in files. This possibly inaccurate or outdated information was potentially damaging to an employee when maintained in files without his knowledge. In addition to not knowing what information was collected, the individual could not be sure to what uses it was being put. Many began to question just how much information really was required by organizations.

The use of computers as a base for record systems has also contributed to fears of the American public. Survey research often reveals that the public harbors deep suspicions about the eventual consequence of a fully computerized society. In point of fact, there are numerous advantages that accrue to a society relying on computerized, or automated, systems. The cost-effectiveness of computers permits the extension of services to a greater number of individuals than was ever before possible. These services are provided, in addition, with a higher degree of efficiency and accuracy. Finally, automation has strengthened, in many cases, the confidentiality of an individual's personal record. It is a more difficult process to make an unauthorized entry into a computer system than would be the case with a single manual file.

At the same time, however, the increased usage and concurrent growth in record-keeping abilities of organizations have potential negative ramifications. One of the major problems is that the expansion of our information-gathering ability has far outstripped the ability of individuals to determine what type of personal information is released and for what purposes. While we have taken great strides in increasing the amount and speed of information collection, storage, and retrieval, society has been somewhat slower in making provisions to allow the individual to monitor the development, use, disclosure, and correction of the information maintained on him. Compared to the face-to-face relationships of the past, the individual is often left defenseless to protect himself against possible errors and the indiscriminant dissemination of information.

In addition, while it may be more difficult to tap a computerized rather than manual system, the potential for harm remains much greater. The amount of information that could be available to a skilled individual capable of by-passing security procedures of a large organization is enormous. Time after time, computer systems that were hailed as impermeable to outside forces have been shown to be vulnerable. Among problems that have plagued automated systems have been weak supervision over physical access to computers, inadequate storage of programs and documentation, vulnerabilities in magnetic tape controls and poor designing of the manual handling of input/output data. Such problems either facilitate access to computer facilities on the part of non-employees or enable those who have authorized access to make unauthorized uses of the information contained in that system.[3] Devising new ways to ensure security of automated records containing personal information while continuing to provide efficient and accurate services to citizens are major challenges in the 1980s.

It is evident from what has been said up to this point, then, that increasingly the public is demanding some measure of control over the nature of personal information given to organizations. This concern is apparent particularly in terms of information at the disposal of governmental units. Yet while it is important to observe this rising level of interest in the protection of personal records, we should not view this demand in isolation but instead should recognize that it is linked to another, equally important, issue: the right of citizens to gain access to the public records of government.

From its origins, one of the most distinctive features of the American polity was the dictum that the governed must be permitted to scrutinize the actions of those who exercise power in its name. The First Amendment to the Constitution establishing the principle of freedom of the press should be seen as a commitment on the part of the Founding Fathers to the view that the public needed to be informed of the operations of government. This attitude was expressed well by one of the chief framers of the Constitution, James Madison: "A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance; And the people who mean to be their own Governors, must arm themselves with the power, which knowledge gives."[4]

Yet while the foundations of our government rested on the premise of citizen access to public information, frequently the reality of the situation was very different. Regrettably this was often the case in recent times, when abuses of power went undetected as roadblocks were placed in the way of citizens monitoring government action. Contemporary restrictions on public access were all the more unfortunate due to the dramatic growth of the size of government. Three interrelated processes were at work. First of all, bureaucracies impacted on more and

more areas of an individual's life. Second, the traditional distinction between legislatures as policy-making bodies and bureaucracies as policy-implementing bodies was being obscured. Third, bureaucracies were largely unaccountable to constituents or to the electoral process. The cumulative effect of these changes was to heighten the need for public awareness of government behavior; the irony, of course, was the governmental response to place more restrictions on the flow of information.

It should come as little surprise to anyone that a consequence of this situation was a noticeable decline in confidence and trust of the public towards government officials. It is incumbent upon government, however, to take the steps necessary to reverse this trend. Nothing less than the continued health of our democratic system is at stake. It is axiomatic that a free society cannot survive if its government operates in secrecy. In order for the American people to exercise the rights and responsibilities pertaining to them under the Constitution, there must occur an open and accurate flow of information between government and the public.

Two critical issues, therefore, confront both federal and state government and demand resolution. First of all, governments must design appropriate measures to guarantee the privacy of personal records. Second, governments must permit citizens to have access to public records. It is in response to these concerns that Governor Harry Hughes created the Information Practices Commission. Its mandate is to examine the personal record-keeping practices of state agencies with an eye towards achieving an appropriate balance of the individual's right to privacy, the information requirements of public organizations, and the public's right to be informed. In this Interim Report, the Commission details what it has discovered up to this point in time and the future course of its study.

II. THE CURRENT STATUS OF PRIVACY POLICY IN MARYLAND

An earlier section of this report raised some of the major concerns regarding privacy protection. However, it would be erroneous to suggest that there does not exist currently any protection of personal records held by agencies of Maryland government. In point of fact, there are several provisions of the Maryland Annotated Code which seek either to ensure confidentiality of such records or to enable an individual to have access to files containing personal facts of his life. Particularly significant statutes in this regard are those which establish the Criminal Justice Information System and delineate explicit privacy procedures for criminal records,[5] classify juvenile court records as confidential and separate from those of adult offenders,[6] and restrict the type of information collected from applicants for State employment.[7] In addition to specific statutes pertinent to privacy concerns, numerous state agencies have issued regulations requiring confidentiality of personal records. For example, the Department of Health and Mental Hygiene restricts access to records of the Maternal and Child and Crippled Children's Programs.[8] Finally, Maryland is subject to numerous federal regulations mandating privacy protection as a precondition to participation in various categorical grant programs. For example, the Office of Family Assistance of the United States Department of Health and Human Services requires states to safeguard public assistance records in those programs involving federal financial participation.[9]

The Information Practices Commission applauds those efforts that have already been taken by the State of Maryland to protect personal records. The Commission believes, however, that though the actions of the state in this area have been noteworthy, much more work needs to be accomplished. More specifically, the Commission asserts that the magnitude of the issue demands consideration of the

enactment of comprehensive privacy legislation. Despite numerous references to privacy in the Annotated Code, the Commission intends to determine whether the absence of a comprehensive statute places considerable restraints on the protection of personal records.

Several examples will demonstrate the uneven and non-uniform character of legislation in this regard, particularly in the area of an individual's right to access to records involving personal facts of his life. Under Maryland law, this "person in interest" is permitted to have access to his personnel files, if he is a state employee, and to examine his educational records.[10] However, no similar explicit access provisions are accorded to the "person in interest" if he is a patient in a Maryland state hospital or a client of a social service agency. This situation has led to considerable confusion regarding the legitimate rights of the "person in interest". For example, the Consumer Council of Maryland recently conducted a survey of eighteen public and private hospitals in the Baltimore metropolitan area and an additional sampling of county hospitals. The Consumer Council asked the following question: "Do patients in your hospital have access to their medical records?" The results demonstrated a clear absence of uniform procedures in this area. Some hospitals indicated that a patient would never be granted access to such records. Others suggested that medical records would be released if the request came from an attorney. Still other hospitals maintained that the request would only be honored if disclosure was authorized by the attending physician. Finally, at least one hospital stated that patients are given access to their records. It is obvious that the findings of the Consumer Council demand further investigation of this issue.[11]

A second area where one finds a lack of uniform procedures involves the inter-agency disclosure of personal information. For example, the state statute governing inter-agency transfer of public assistance records is noticeably stricter than are statutes pertaining to tax information. The Department of Human Resources is prohibited from disclosing public assistance records without either a court order or ". . . for purposes directly connected with the administration of public assistance, medical assistance, or social services programs . . ."[12] In the case of tax records, however, significant amounts of tax information can be disclosed ". . . to an officer of the state having a right thereto in his official capacity . . ."[13] The language used in statutes protecting the confidentiality of tax records (and many other categories of personal records as well) raises important questions. Should an agency be prevented from redisclosing personal information to another agency for purposes not directly related to the original collection of the information? Should the "person in interest" be notified that information is being disclosed to another agency? Should the "person in interest" be permitted to have an opportunity to contest the accuracy of such records before they are released to another agency? What restrictions should be placed on the redisclosure of personal records by third parties? The Information Practices Commission intends to conduct a thorough examination of these, and other, questions associated with the inter-agency disclosure of personal records.

Further evidence of a general lack of uniformity of existing privacy legislation can be seen in the fact that many categories of personal records are considered to be confidential while others are not. Both voter registration records and motor vehicle records tend, as a general rule, to fall within the non-confidential area. For example, under existing law, voter registration lists can be released to the public as long as the recipient agrees not to use

the information for commercial solicitation or other business purposes. The only other possible situation that could prevent public access to voter registration lists would be for the Board of Supervisors of Elections to issue a special order.[14] Similarly, the general premise regarding motor vehicle records is that they are open to public inspection. Access is permitted to driver records, vehicle ownership information and insurance information as long as the Motor Vehicle Administration approves of the purported intended use of the information; a separate medical file, however, is considered to be confidential. The Information Practices Commission will examine the appropriateness of allowing public access to records which contain personal facts of an individual's life.

One final problem remains to be discussed: difficulties associated with the security of personal information in the possession of state government. In point of fact, this is not a problem of ambiguous statutes on this subject in the Annotated Code, but rather a case of inadequate implementation by agencies. Numerous examples abound in this area, of which perhaps the most publicized have been a series of incidents regarding lack of protection of taxpayers' records. In 1977, a security committee of the Data Processing Division, responsible for many tax records, disclosed numerous problems including access to computer operations by unauthorized persons, the unauthorized uses of computer facilities by individuals with authorized access privileges, and inadequate building security.[16] The following year, tax records were found in trash bins outside the Treasury Building on two separate occasions in violation of state law.[17] At approximately the same time, documents containing refund information were provided to a reporter by a state employee.[18] The Commission provides these examples to suggest the obvious need for a thorough examination of security of personal records throughout state agencies.

III. THE CURRENT STATUS OF ACCESS TO PUBLIC INFORMATION IN MARYLAND

Just as in the case of protection of personal records, the State of Maryland has taken significant steps to permit individual citizens to have access to the public records of government. The hallmark of this effort is the Public Information Act, first enacted in 1970 and amended periodically since then.[19] The Act applies to nearly every public agency in the state. It establishes procedures whereby citizens can write to designated custodians of public documents in each agency requesting copies of specified records. This right to access to public information is available to any individual; one does not need to justify the reason why one should be provided with such information. Unless the record requested falls within a specified restricted category, such as records pertaining to criminal investigative proceedings, the information must be provided by the custodian to the individual making the request. If the request is denied, an appeals process is set into motion that could conceivably end up overturning the original refusal by the custodian to grant access.

Though the Public Information Act expands in notable ways the rights of Maryland citizens, there are, nonetheless, a number of questions that have been raised. One of the most serious problems is the fact that the Act does not require the custodian to respond to the requesting individual within a specified time period. Once the custodian actually denies a request, he must provide the individual with a written statement within ten working days specifying the reasons for the denial and the remedies available to the individual. However, prior to making an official denial, the custodian does not operate under a time restriction. The obvious consequence of this situation is that agencies essentially can deny public access to government records without having to make a formal declaration of denial. The Commission desires to receive comments from

any citizens who may have experienced difficulties with this provision of the Public Information Act.

In addition, many people have expressed other questions about the Act. Are there categories of records to which the public cannot gain access under current law which should be open for public inspection? Are the personal records provisions of the Act adequate? Should an agency, by regulation, be allowed to make records confidential and thus prevent their disclosure? Should search and other related costs in finding and reviewing documents be charged to the requesting party? Do custodians in various agencies implement the mandates of the Act in similar ways? The Commission intends to review carefully each of the concerns that have been mentioned here.

IV. ISSUES REGARDING PRIVACY

It is clear from what has been said previously that privacy of personal records is an issue demanding immediate attention. Many experts and state officials have suggested a variety of guidelines for use in management of records. In attempting to accomplish the task before it, the Information Practices Commission intends to examine these proposed general principles regarding privacy in order to determine the extent to which they are appropriate to the management of various types of state records.

1. An agency should be required to collect only such information from an individual which is necessary, timely and relevant to the performance of the duties of that agency.

2. An agency should make every effort to collect personal information from an individual himself.

3. An agency to the greatest extent possible should inform an individual of the type of information that is collected about him.

4. An agency that requests information of a personal nature from an individual should notify the individual of the specific statute authorizing the request, the principal uses of such information, and the consequences of failing to comply with the request.

5. An individual should have the right, to the greatest extent possible, to determine which records are collected, maintained, and disseminated by an agency.

6. An agency should maintain only such information about individuals as is necessary to perform its tasks.

7. An agency maintaining records involving personal facts of an individual's life should publish on an annual basis the name and location of such records, the categories of individuals contained in the record system, the categories of records maintained in the system, the uses of such records, policies and procedures regarding storage, retrievability, access controls, retention, disposal, accuracy and security of such records, the title and address of the individual responsible for each record, agency procedures whereby an individual can be notified on request if the system of records contains a record pertaining to that individual, and the categories of sources of records in the system.

8. An individual should be permitted to have access to information pertaining to him which is contained in an agency record.

9. An individual should be permitted to copy information pertaining to him which is contained in an agency record.

10. An individual should be permitted to challenge the accuracy of information pertaining to him which is contained in an agency record.

11. An agency should make every effort to verify the accuracy and relevance of information concerning an individual before disclosing such information to another person or agency.

12. An agency should make every effort to inform an individual of the nature of the information to be disclosed and to whom the information may be disclosed.

13. An agency to the greatest extent possible should permit an individual to prevent information that was obtained for one purpose from being used or made available for other purposes.

14. An agency maintaining records involving personal facts of an individual's life should maintain an accurate record of any disclosure of such information, including, but not necessarily limited to, the date, the name and address of the person or agency receiving the information, the statutory authority permitting the disclosure of the information, and the purported use of the information by the recipient.

15. An agency disclosing records involving personal facts of an individual's life shall permit the individual to have access to its dissemination logs.

16. An agency which has disclosed records involving personal facts of an individual's life to another agency or person should notify that agency or person in the event either of a challenge to the accuracy of the record or a correction to its contents.

17. An agency releasing information for the purposes of scientific research, statistical reporting, financial auditing or program evaluation must ensure the confidentiality of the identity of individuals.

18. An agency maintaining records involving personal facts of an individual's life should enact and implement appropriate safeguards to ensure the integrity, security and confidentiality of such records.

19. An agency maintaining records involving personal facts of an individual's life should enact safeguards to prevent misuse of such information.

20. In order to determine the appropriate level of security for each category of personal records, agencies should authorize a security risk analysis to be performed.

21. An agency official who discloses records involving personal facts of an individual's life in disregard of existing statutes shall be held accountable for such actions.

22. An agency which is authorized in accordance with state law and regulation to destroy records involving personal facts of an individual's life should ensure that records are destroyed in a secure and thorough manner.

V. THE PLAN OF THE INFORMATION PRACTICES COMMISSION

Increasingly, many groups in society are supporting the above mentioned principles and are asserting that they should be a part of any comprehensive privacy legislation. The Information Practices Commission recognizes, however, that there may be serious questions regarding either the feasibility or propriety of adopting several of the principles. As a consequence, the Commission intends to take a very open approach before recommending any additional legislation.

First of all, the Information Practices Commission is desirous of soliciting opinions and advice from agency officials. The Commission can envisage situations where a principle might work very well for the great majority of agencies but poorly for a few. For example, to compel criminal justice officials to inform an individual that he is currently under surveillance would obviously defeat the purpose of the investigation. The Commission will, therefore, examine reasonable and necessary exceptions to any privacy legislation recommendations, should such recommendations be made.

It is anticipated that agencies will present their concerns to the Information Practices Commission in at least two ways. First, a representative of the Commission will schedule appointments with officials of the major state agencies.

These on-site visits by the Commission's representative will enhance the Commission's understanding of the record-keeping practices of various agencies and its awareness of any special agency needs. Second, hearings will be scheduled during the Spring for agency officials. At these hearings, officials would have an opportunity to present testimony before the full body of the Information Practices Commission. In addition to these two principal methods, the Commission welcomes communication from agency officials at any time.

The Commission is also particularly interested in soliciting testimony at its public hearings from state and local government employees. Maintaining the integrity of public employees' personnel records should be a paramount concern of agency officials. The Commission is anxious to receive testimony either from any employees who may have experienced difficulties in this regard or from their representatives.

Additionally, the Commission intends to hold hearings in order to receive testimony from interested members of the public. The essence of the Commission's mandate is to ensure the balance between the individual citizen's right to privacy and the citizens' right to access to public information. The Information Practices Commission should communicate directly with citizen groups to be sure that major issues of concern to the public are being sufficiently examined.

Finally, the Commission will closely examine the experiences of other states and the Federal Government in the enactment of privacy and open records legislation. Several states, as well as the Federal Government, have enacted comprehensive legislation in this regard in the last decade. The State of Maryland can learn much from the experience of other governmental units. Whenever new legislation is being considered, many legitimate questions are asked regarding

the bill's potential impact. This might be particularly the case regarding the privacy provisions of such comprehensive legislation. Many are concerned about the eventual cost of enacting privacy guarantees, while others worry that agencies forced to comply with its provisions might suffer a decline in effectiveness. Still others fear that privacy provisions will serve to deny citizens their rightful access to public information. By examining the implementation of privacy measures in other governmental settings, the Commission might be in a position to make useful forecasts for the situation in Maryland. More importantly, however, it will have an excellent opportunity at the policy formulation stage to make adjustments in any possible proposals, thereby learning from the difficulties of others.

Examination of the actions of other governmental units can be particularly useful in one area of the Commission's work: determining procedures to be used to monitor compliance with privacy and open records legislation. Various methods have been used by different states. In some cases, the Attorney General's Office has provided interpretation of the law through the use of opinions. In others, advisory review boards have been created, with final interpretative authority resting with the Attorney General. At least one state has established a Confidential Records Council to hear complaints from the general public. Finally, some units have formed permanent review boards with authority to administer and enforce the law. The Information Practices Commission will be guided in its recommendations by the experiences of these varying methods, as well as by the views of officials within Maryland government.

In summary, the Information Practices Commission commits itself to recommending those measures which will protect the rights of individual citizens concerning personal data while not hampering the performance of state government

or the legitimate access rights of citizens to public documents. The Commission recognizes the delicate and difficult nature of the balance that must be achieved and dedicates itself to arriving at that balance.

FOOTNOTES

1. For an analysis of research findings relating to increases in privacy concerns, see Louis Harris and Associates, Inc. and Alan F. Westin, The Dimensions of Privacy. A National Opinion Research Survey of Attitudes Toward Privacy (Stevens Point, Wisconsin: Sentry Insurance, 1979).

2. U.S. Privacy Protection Study Commission, Personal privacy in an information society. Report of the Privacy Protection Study Commission, 1977. For a further discussion of privacy concerns, see U.S. Department of Health, Education and Welfare, Secretary's Advisory Committee on Automated Personal Data Systems, Records, computers, and the rights of citizens, 1973; National Academy of Sciences, Computer Science and Engineering Board, Project on computer databanks in a free society: computers, record-keeping and privacy; report. Alan F. Westin and Michael Baker, Project directors. (New York: Quadrangle, 1972); Alan F. Westin, Privacy and freedom (New York: Atheneum, 1970); U.S., Congress, Senate, Committee on Government Operations and Committee on the Judiciary, Privacy: the collection, use, and computerization of personal data, Hearings before an Ad Hoc Subcommittee on Privacy and Information Systems and the Subcommittee on Constitutional Rights on S.3418, 93d. Cong., 2d sess., 1974; U.S., Congress, Senate, Committee on the Judiciary, Federal Data Banks and Constitutional Rights, 93d. Cong., 2d. sess., 1974; U.S., Library of Congress, Congressional Research Service, Privacy: Information Technology Implications, Louise E. G. Becker, Issue Brief Number IB 74105,1980; and U.S., Library of Congress, Congressional Research Service, Privacy: Concepts and Problems, Sarah P. Collins, Issue Brief Number IB 74123, 1980.

3. See Donn B. Parker, "Computer abuse perpetrators and vulnerabilities of computer systems", Proceedings of the National Computer Conference 45 (1976): 65-73; and Robert H. Courtney, Jr., Security Risk Assessment in Electronic Data Processing Systems (n.p.: MEC, 1975).

4. U.S., Congress, Senate, Committee on the Judiciary, Freedom of Information Act Source Book: Legislative Materials, Cases, Articles, 93d. Cong., 2d. sess., 1974, p. 6. For a further discussion of issues relating to citizen access to public information, see U.S., Congress, House, Committee on Government Operations, and U.S., Congress, Senate, Committee on the Judiciary, Freedom of Information Act and Amendments of 1974, Source Book: Legislative History, Texts, And Other Documents, 94th Cong., 1st sess., 1975; U.S., Congress, House, Committee on Government Operations, A Citizen's Guide on How to Use the Freedom of Information Act and the Privacy Act in Requesting Government Documents, 95th Cong., 1st sess., 1977; and U.S., Congress, Senate, Committee on Government Operations, Government in the Sunshine, Hearings before a subcommittee of the House Committee on Government Operations on S.260, 93rd. Cong., 2d. sess., 1974.

5. Maryland, Annotated Code, art. 27, sec. 292, and art. 27, sec. 736-752.

6. Maryland, Annotated Code, art. CJ 3, sec. 828.

7. Maryland, Annotated Code, art. 100, sec. 95.

8. Maryland, Comar, Title 10, Subtitle 03, Chapter 02.

9. U.S., Code of Federal Regulations, Title 45, Part 205, Section 205.50.

10. Maryland, Annotated Code, art. 76A, sec. 3.

11. Maryland, Offices of the Attorney General, Consumer Council, Patient Access to Medical Records in the State of Maryland, 1980. The original survey was conducted in the Summer of 1979. In December 1980 the Consumer Council asked the question again of the same hospitals. The Consumer Council found a general lack of consistency with the responses that were previously received.

12. Maryland, Annotated Code, art. 88A, sec. 6(a).

13. Maryland, Annotated Code, art. 81, sec. 5A.

14. Maryland, Annotated Code, art. 33, sec. 3-11(a), and art. 33, sec. 3-22.

15. Maryland, Annotated Code, Transportation, 12-111, 12-112, 16-118, and 16-119.

16. "Computer data secure", Annapolis, The Evening Capital, 19 September 1978, p. 3.

17. "Md. Tax Data Again Lands in Trash", Washington Star, 26 August 1978, pp. A-1, A-6, and "Tax document security unexplained by State", Annapolis, The Evening Capital, 30 August 1978, p. 3.

18. David Goeller, "Police probe leak of tax information", Annapolis, The Evening Capital, 22 August 1978.

19. Maryland, Annotated Code, art. 76A. For a useful discussion of the Act, see Dennis M. Sweeney and Robert G. Smith, Public Information Act (n.p.: MICPEL, 1980).

APPENDIX

A Selected List of Statutes in the Maryland Annotated Code Pertaining to Protection of Personal Records

Article 27, Section 292 -	Provides for expungement of an arrest record if the individual is not convicted in the particular case and has never been previously convicted of a crime; also provides for expungement of records of first offenders who have been placed on probation.
Article 27, Section 736 -	Provides for expungement of police records for individuals who are arrested but not charged.
Article 27, Section 737 -	Provides for expungement of police records for individuals who are arrested but not convicted.
Article 27, Section 740 -	Restricts employers or educational institutions from requiring an individual who is applying for employment or admission to disclose information concerning criminal charges against him that have been expunged.
Article 27, Section 742 -	Establishes the Criminal Justice Information System.
Article 27, Section 744 -	Establishes the Criminal Justice Advisory Board.
Article 27, Section 751 -	Grants an individual the right to inspect criminal records pertaining to him.
Article 27, Section 752 -	Establishes procedures for challenges to the accuracy of criminal records.
Article 43, Section 54L -	Regulates the disclosure of medical information by the provider of medical care.
Article 43, Section 565C (6) -	Deals with the protection of the records of patients in skilled nursing facilities and intermediate care facilities.
Article 48, Section 354-O -	Regulates the disclosure of medical information by nonprofit health service plans.
Article 76A, Section 1A -	Contains a general statement restricting the collection of personal information.
Article 76A, Section 3 -	Restricts public disclosure of certain types of personal records.

Article 81, Section 5A -	Establishes the confidentiality of property tax records.
Article 81, Section 300 -	Establishes the confidentiality of income tax records.
Article 81, Section 302A -	Places restrictions on the disclosure of income tax returns by those who have assisted in the preparation of such returns.
Article 81, Section 366 -	Regulates the disclosure of retail sales tax information.
Article 88A, Section 6 -	Regulates the disclosure of social service records.
Article 100, Section 95A -	Places limitations on the types of questions to be asked of applicants for employment.
Article 100, Section 95B -	Prevents public and private employees from using polygraph tests for purposes of employment.

The State of Maryland

Executive Department

EXECUTIVE ORDER

01.01.1980.11

Information Practices Commission

WHEREAS, The Constitutions of Maryland and of the United States guarantee a fundamental right of privacy under certain circumstances; and

WHEREAS, There must be a reasonable balance between an individual's right of privacy and the public's right to be informed; and

WHEREAS, A society founded on democratic values necessaril requires governmental openness and accountability and

WHEREAS, It is well recognized that in an age of computers there are contrasting dangers of overexposing personal information and underexposing informatio that should be made public; and

WHEREAS, State government must seek a proper balance between the individual right of personal privacy, the practices of public organizations in accumulating, maintaining and disseminating informatio about people, and the need of the public to be informed;

NOW, THEREFORE, I, HARRY HUGHES, GOVERNOR OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, DO HEREBY PROMULGATE THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIAT

1. The Information Practices Commission is hereby created.

2. The Commission consists of thirteen members appointed by the Governor, one of whom shall be a member of the House of Delegates, one of whom shall be a member of the Senate, one of whom shall represent the Department of Personnel, one of whom shall represent the Comptroller of the Treasury, one of whom shall represent the Department of General Services, one of whom shall represent the Attorney General's Office, and seven public-at-large members. The Governor sha designate a chairperson from among the thirteen members.

3. The Commission shall conduct a thorough study of policies and procedures regarding the collection, maintenance, use, security, dissemination, and destruction of personal records held by State government and, in connection with that study, shall:

(a) Study the policies and procedures of the Uniform Freedom of Information Act and the proposed Uniform Fair Information Practices

(Privacy) Act, and, where appropriate, examine the extent to which they interact and interface. The points for initial study may include:

(1) The draft proposal of the National Conference of Commissioners on Uniform State Laws entitled, "Uniform Privacy Act;"

(2) House Bill 112 of 1980;

(3) The report of the United States "Privacy Protection Study Commission";

(b) Hold hearings in which persons with an interest in information practices may present their views;

(c) Conduct meetings, research programs, investigations and discussions as necessary to gather information relating to information practices

(d) Submit by October 1, 1980, an interim report together with any preliminary legislative proposals regarding the Public Information Act (Art. 76A, §1 et sec. of the Maryland Annotated Code) or any other provision of State law that would be necessary to implement the recommendations of the report; and

(e) Submit a final report by October 1, 1981, together with any legislative proposals necessary to implement the recommendations of that report.

4. Each State agency shall cooperate fully with the Commission in its efforts to accomplish its mandate under this Order.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 25th day of July, 1980.

Harry Hughes
Governor of Maryland

ATTEST:

Fred L. Wineland
Secretary of State

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

HARRY HUGHES
GOVERNOR

Governor's Information Practices Commission
State House- Room H-4
(301)-269-2810

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Governor's Information Practices Commission

Minutes of Commission meeting- January 19, 1981

The Commission convened with all present except Mr. E. Roy Shawn, Mr. John E. Donahue, Ms. Florence B. Isbell, Dr. Harriet Trader and Mr. Wayne Heckrotte. The meeting began with the introduction of Mr. John Clinton, the new representative from the Comptroller's Office. Mr. Arthur S. Drea, Jr. presented a flyer on a book entitled, Guidebook to Freedom of Information and Privacy Acts. It was decided that libraries would be checked to see if the book was currently available.

Mr. Drea asked if there were any additions to the minutes from the previous meeting. Delegate Nancy Kopp said that it had been her impression that the Commission had not decided that the issue of confidentiality of bill drafts was beyond its jurisdiction as indicated in the minutes of the meeting of December 15, 1980, but would be dealt with later if time allowed. Delegate Kopp requested that the minutes be corrected to reflect this fact. The minutes were adopted with this change.

Mr. Drea discussed the scheduling of the two public hearings. One is to be held in Annapolis for the general public early in the legislative session,perhaps the third week of February. The second is to be held in Baltimore and will be structured for agencies. Delegate Kopp added that the Commission might want a public hearing in Baltimore for state employees. Mr. Drea stressed that the Baltimore hearing will be open to all but if another hearing was necessary, one could be scheduled. Mr. Dennis Hanratty stated that it would be desireable for him to meet with the representatives from agencies before the hearings.

Discussion commenced on the proposed Interim Report. Delegate Kopp said that in the Introduction there appeared to be a confusion between the records of private organizations and those of governmental organizations. In addition, the report needed a more explicit recognition of the right of citizens to gain access to the public records of government. She suggested the insertion of a statement reflecting the growing concern in this area. Mr. Dennis Sweeney agreed, stating that current legislation dealing with openess in records and privacy had been underscrutinized but that the report seemed to put a greater emphasis on privacy. Mr. Drea concurred that the Introduction should be modified, but nonetheless stated that the emphasis of work would probably be in the privacy area. It was discussed and decided that a paragraph would be added to detail the public's right to know more explicitly.

Mr. Albert Gardner requested clarification of the following statement that appeared in the first page of the report: " Today, companies throughout the world rather routinely engage in transactions that would have been impossible before the 1950s". Mr. Hanratty responded by providing an example of a foreign physician contacting the U.S. National Library of Medicine and receiving almost instantaneous assistance in diagnosis. Mr. Gardner stated that it was his understanding that computers affect the speed of transactions but not the type of transactions that could be conducted. Mr. Hanratty answered that certain transactions became feasible only as a consequence of computerization. Mr. Robin Zee felt that the key word of the sentence was "routinely". It was suggested that the sentence be modified to read: "Today, companies throughout the world rather routinely engage in transactions in a manner that would have been impossible before the 1950s".

A number of comments and questions were clarified rather quickly. Mr. Drea, Delegate Kopp and Mr. Clinton felt that the report should be footnoted; the other members concurred. Delegate Kopp asked if the use of "personal records" rather than "personnel records" in the first paragraph of Section IV had been intentional. Mr. Hanratty replied that the term "personal" was meant to include "personnel". Finally, Mr. Zee asked if the statement of the second paragraph of page 3- "...the expansion of our information-gathering ability has far outstripped the ability of individuals to determine what type of personal information is released and for what purposes"- was in reference to the ability to collect information. Mr. Hanratty responded affirmatively.

Considerable discussion ensued over the statement on page 5 of the report asserting the need for the enactment of comprehensive privacy legislation. Delegate Kopp maintained that though there was certainly a need for a thorough examination of the issues involved, it was too early to conclude that legislation was required. Mr. Hanratty noted that Mr. Wayne Heckrotte had called him and raised essentially the same objection. At the same time, a number of members requested clarification of the word "comprehensive". Mr. Sweeney observed that comprehensive privacy protection might be provided through the enactment of categorical, rather than omnibus, legislation. Mr. Hanratty stated that it had been his impression that the Commission supported the development of omnibus legislation; Commission members felt, however, that his point remained an open question. Mr. Zee suggested that it was probably premature to conclude that we needed a comprehensive privacy act. After deliberating on these points, the Commission instructed Mr. Hanratty to eliminate all statements in the report calling for comprehensive legislation and to state instead that the Commission would examine the suitability of such legislation.

Discussion was again held on the need for a balance in the report between privacy issues and public access issues. Delegate Kopp recommended the inclusion of a new section that would deal with matters affecting the right of citizens to gain access to the public records of government. Mr. Sweeney agreed, noting that the report gives the impression that privacy was by far and away the principal concern. Unless the emphasis on privacy was tempered somewhat, he suggested, the Commission would not receive substantial input from citizens on the issue of access to public records. Mr. Zee supported this position, noting that the report could, and should not be so biased as to eliminate the public records side of the question altogether.

Senator Timothy Hickman raised the issue of the development of adequate security of personal records in the possession of state government. He suggested that it might be helpful to expand and strengthen those sections of the report dealing with security, noting in particular the need for risk analysis assessment. A consensus was reached to add a paragraph that would address these points.

Various comments were made concerning the section of the report noting the Consumer Council's survey of record-keeping practices of Maryland hospitals. Senator Hickman asked whether the Consumer Council had surveyed state hospitals only, or included both state and private hospitals; Mr. Hanratty responded that the survey covered both types. Mr. Drea felt that this point should be noted in the report. Mr. Hanratty stated that a comprehensive survey examining hospital procedures was being designed by Ms. Thea Cunningham, and asked for guidance regarding to whom the survey should be sent. Delegate Kopp pointed out that the Executive Order establishing the Commission only authorized that body to consider the practices of state institutions. It was Mr. Sweeney's opinion, however, that access to hospital records was such a sensitive and important issue that the Commission should consider including private institutions as well. The Commission decided to send the survey to both public and private institutions; in the letter addressed to private institutions, however, the Commission would simply ask for their cooperation.

Mr. Sweeney suggested the utility of including an Appendix to the report listing those sections of the Maryland Annotated Code pertaining to the protection of personal records. In response Mr. Hanratty felt that such a list might be incomplete since there could be articles of the Annotated Code of which he might be unaware. He also recounted difficulties in receiving information on the subject from various Assistant Attorneys General. Mr. Sweeney offered to be of assistance to Mr. Hanratty in this regard. The Commission concluded that a list of privacy statutes would be attached to the report, though the list would be selected, not comprehensive.

Mr. Drea solicited the opinions of Commission members on Section III entitled "A Privacy Bill of Rights." It was agreed, first of all, that the section should be tentatively retitled, "General Issues of Privacy." As in the case of the report examining the current status of privacy policy in Maryland, the Commission felt that the language introducing Section III should be moderated. Rather than imply that the Commission had already endorsed the list of principles in that section, it was felt that the introductory statement should be rephrased indicating that these were merely issues to be considered. Delegate Kopp read a suggested introduction to which the members agreed.

Comments were requested from the members regarding the twenty-one issues that were listed in the report. Mr. Sweeney expressed concern that there was insufficient attention given to the cost of enacting comprehensive privacy protection. Mr. Hanratty replied that, in his opinion, costs were adequately mentioned on page 12 of Section IV. In addition, Mr. Drea observed that most of the issues contained disclaimers such as "to the greatest extent possible." It was decided to leave references to the cost of privacy protection as they appeared in the proposed report. One issue was modified at the request of Mr. Zee. Issue #21 was changed to read: "An agency which is authorized in accordance with state law and regulation to destroy records involving personal facts of an individual's life should ensure that records are destroyed in a secure and thorough manner."

Commission members agreed that the format used in Section III was an appropriate one in order to receive comments from agency officials and the general public. By listing issues numerically, readers would be able to make comments to specific items in the report. Mr. Zee noted that the Commission might want to invite groups to add issues that possibly were overlooked in the report. In this regard, Mr. Hanratty read a copy of a letter to be sent to agency officials along with the Interim Report. The members supported the content of the letter; Delegate Kopp felt, however, that the letter should come from Mr. Drea as Chairman of the Commission. This position was supported by the other members and adopted. Mr. Donald Tynes urged the inclusion in the letter of a date by which agency officials should respond to Commission requests; this position was also adopted.

Discussion then focused on the timing of the report. Mr. Drea suggested that the Interim Report be given to the Governor and the members of the General Assembly first, and then to agencies and interest groups. Delegate Kopp observed that the Information Practices Commission was a gubernatorial rather than legislative body and therefore protocol required that the Governor receive the report before anyone else. This position was seconded by Mr. Zee. It was decided to send the report to the Governor first; then, after waiting several days, the Commission would contact the Governor's Office and ask if there were any major objections before distributing it.

Senator Hickman inquired whether the staff had completed the personal record-keeping survey to be sent to agency officals. Mr. Hanratty showed him a copy of the proposed survey and stated that he felt that it would be better to delay distribution of the survey until agency officials had designated their liaisons to the Commission.

Commission members proceeded to discuss the new Section IV pertaining to access to public records. Delegate Kopp suggested the inclusion in the report of problems that citizens may have experienced in gaining access to such records. Mr. Hanratty agreed and asked Mr. Sweeney whether there existed any report summarizing problems encountered in this regard. Mr. Sweeney responded that such a report did not exist but offered to provide assistance to the Commission in delineating these problems. In order to provide a better sense of balance to the report, Commission members decided to change the part examining status of access to public information in Maryland to Section III and made Section IV cover issues regarding privacy. The plan of the Commission would then follow as Section V.

Two principal modifications were requested in the section of the proposed Interim Report specifying the plan of the Information Practices Commission. Delegate Kopp and Mr. Zee asked Mr. Hanratty to look at that section and modify any language obligating the Commission to design comprehensive privacy legislation. Mr. Clinton noted that the section discussed public hearings for agency officials and citizen groups and inquired as to where state employees fit into this general plan. Mr. Hanratty conceded that this was an oversight of the report and agreed to include a statement requesting the participation of state employees at the Commission's public hearings.

Members turned to a discussion of a number of administrative matters associated with the Interim Report. Mr. Drea suggested that the report should include the names of all Commission members. Mr. Drea distributed a list of interest groups to be considered as recipients of the report; any additions or deletions would be referred to Mr. Hanratty. Commission members considered the publishing of the Interim Report in the Maryland Register and other publicity

through newspaper articles. Mr. Drea stated that after the report was delivered to the Governor, Mr. Hanratty would contact Mr. Gene Oishi regarding a possible press release.

Two final points were covered before the meeting was concluded. Delegate Kopp asked that in the future the minutes be stamped "DRAFT" until adopted by the Commission members and that the minutes from the previous meeting be corrected. Mr. Sweeney asked whether bills were being reviewed to determine whether they should be deferred. Mr. Drea responded that he was handling it himself and would send letters regarding bills that the Commission would like deferred.

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MINUTES OF PUBLIC HEARING-FEBRUARY 23, 1981

The first Public Hearing of the Governor's Information Practices Commission was held February 23, 1981 at 10 A.M. in the Montgomery County Delegation Room of the Lowe House Office Building in Annapolis, Maryland. The following Commission members were in attendance: Mr. Arthur S. Drea, Jr, Chairman, Mr. Dennis Sweeney, Mr. John Clinton, Mr. Donald Tynes, Dr. Harriet Trader, Delegate Nancy Kopp, Senator Timothy Hickman, Mr. Robin Zee, Mr. Albert Gardner and Mr. John Donahue.

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Mr. Arthur S. Drea opened the hearing by explaining that the Commission had been charged with the responsibility of examining the record-keeping practices of state government and balancing the individual's right to privacy with the public's right to know.

The first speaker, Ms. Pat Doane, Aide to Delegate Judith Toth, related the case of an individual licensed to hunt in Maryland. The individual enlisted Delegate Toth's assistance when he found that his name had been given by the State of Maryland to the National Rifle Association. Delegate Toth discovered that current statute allows the State list to be sold. This policy is contrary to her belief that the confidentiality of personal information submitted to obtain a license should be protected. To this end, Delegate Toth introduced House Bill 1366 which would affect the sale of the Motor Vehicle Administration's List for car registration or personal licenses and House Bill 1368 which covers all state licensed individuals and prohibits the sale of their personal information for political or commercial purposes. Ms. Doane asked for the support of the Commission in this legislation.

Ms. Doane additionally discussed the State Information Referral Service. Due to the fact that Maryland has existing referral services, Ms. Doane maintained that the cost for a centralized service would be less for Maryland than other states. She noted that as a temporary stopgap measure, the state is helping citizens contact government by

functionalizing and using color-coded pages in the telephone book. This does not serve another function of the Information Referral Service however, which is to discover the needs of the citizens. Delegate Kopp and Ms. Doane discussed the state wide toll-free number and its funding. There was some confusion as to whether or not the current service was responsible for referral of all services.

In reference to the dissemination of personal information through state lists, Mr. Drea and Ms. Doane discussed the difficulties involved in providing information needed by the public-such as verification that an individual is a licensed physician-and at the same time limiting the information disseminated. This balance was not addressed in the bill.

The next witness was Mr. Basil Wisner from the Comptroller's Office. Accompanying Mr. Wisner were Mr. George Spriggs (Director-Income Tax Division) and Mr. Philip Martin (Director-Data Processing Division). Mr. Wisner presented written testimony (copy attached) in resonse to an incident cited in the Interim Report. Mr. Wisner discussed the incident and procedures employed in the Comptroller's Office to guarantee the security of personal records.

Mr. Clinton asked about the availability of tax information to other state agencies. Mr. Spriggs responded, citing Article 81, Section 300, which places limitations on the dissemination of tax return information. He stated that in regards to state agency requests, two cases existed where legislation allowed information to be shared with other state agencies-The Absent Parent Tracer Program (Department of Human Resources) and the Property Tax Circuit Breaker Program (Department of Assessments and Taxation). Any other requests from other state agencies for tax information would be referred to the Attorney General for an opinion. Mr. Spriggs responded to three questions posed by Mr. Dennis Hanratty concerning the disclosure of information to other state agencies. Mr. Spriggs informed the Commission that, first, the taxpayer is not notified regarding disclosure; second,

that the accuracy of information is not verified; and third, the taxpayer does not have the opportunity to prohibit such a disclosure. Mr. Wisner added that instances involving the disclosure of information to another state agency primarily evolve when information the taxpayer has supplied to one agency needs to be verified.

Senator Hickman asked if a catalogue of information systems was available at the present time. Mr. Martin explained that there is not a "master" list, noting that each department designed its own system. Mr. Martin observed that the data center functioned as a service area to the other agencies, running systems at the direction of the other agencies through the different procedures that those agencies have established. In response to a question from Senator Hickman, Mr. Martin stated that the Data Processing Division also encompassed the Baltimore Data Center and handled welfare, unemployment and retired employees' checks and food stamps.

Senator Hickman inquired about security measures in the Baltimore facility. Mr. Martin cited the study of security measures conducted in Annapolis mentioned in Mr. Wisner's testimony. A similar check of security was conducted at the Baltimore facility. Both centers had the same type of software and security requirements; however, the building in Baltimore is open to the public. Mr. Martin noted that additional security is provided in the Baltimore facility at the doors to the various rooms housing personal information.

A discussion followed concerning the security measures at terminals for Social Services around the state. Mr. Martin responded that each agency determined its own security levels and that a Security Officer is identified in each agency. In addition, Mr. Martin observed that state legislative auditors examine security procedures in the course of conducting their audits.

Mr. Drea returned to the topic of notifying the taxpayer of record dissemination. Mr. Spriggs stated that to his knowledge there is no law prohibiting the Income Tax Division

from notifying an individual that his tax information is being divulged. To date, the Division has never received complaints from individuals protesting the disclosure of this information.

According to the representatives of the Comptroller's office, Income Tax Information can be released to the State Police conducting a criminal investigation only upon receipt of a court order signed by a judge. In addition, it was noted that information is exchanged between Maryland and the Internal Revenue Service (in accordance with specific federal security regulations) and other states when such states have enacted security measures similar to those in Maryland.

Mr. Zee requested examples of problems the Division may have had in the realm of privacy of personal information. Mr. Spriggs noted that the Division receives requests for tax information pertaining to prominent individuals from members of the press. In addition, requests are received occasionally by telephone where the identity of the individual cannot be verified. Mr. Wisner also mentioned cases involving divorce settlements where a court order is required for the release of income tax information.

Mr. Drea asked if Federal security regulations governing the exchange of information between Maryland and the Internal Revenue Service (IRS) were available to the public. Mr. Spriggs thought that this was the case but stated he would have to check to be certain. In the discussion that followed it became clear that although the Comptroller's Division has its own Security Manual for its Income Tax data, federal regulations govern the release of information obtained from the IRS. Information obtained from the IRS cannot be released by Maryland to another state agency, a criminal investigation (without prior approval) or another division of the Comptroller's office. Mr. Clinton pointed out that Maryland and Minnesota are two states that have been used as models for a national training program on security procedures by the IRS.

Mr. Hanratty asked if Mr. Spriggs had any objections to placing stricter statutory limitations on the disclosure of Income Tax information similar to the language governing public assistance records. Mr. Spriggs commented that the Comptroller's Office would not object to additional limitations and noted that the preference of the department is to limit dissemination as much as possible.

In response to a question posed by Mr. Clinton, Mr. Spriggs elaborated on situations where Income Tax information might be shared with other tax divisions. Mr. Spriggs noted that this usually occurs in joint audits or joint collection efforts. Mr. Wisner added that another incident where information might be shared would be between Sales Tax and Income Tax to verify gross sales upon which to apply sales tax liability.

Mr. Sweeney returned to the issue of inter-state agreements and asked if these agreements were in writing. Mr. Spriggs responded affirmatively and observed that they limit the use that other states can make of records they receive. He agreed to provide samples of such agreements to the Commission.

Mr. Zee requested input in terms of any changes the Comptroller's Office would like to see in the current area of privacy or public information. Mr. Wisner responded that he favored as little dissemination of personal information as possible. In this way, the Comptroller's office could guarantee the confidentiality of such information. Mr. Wisner expressed the view that the privacy of the individual's tax return should be protected to the greatest extent possible.

Mr. Drea inquired as to the number of states with which Maryland had agreements governing the exchange of information. Mr. Spriggs replied that currently there were agreements with 8 to 10 states. The majority of cases necessitating the exchange of information between states occurred between continguous states and involved a person living in one state while working in another. Mr. Drea then asked whether there might not evolve

need for the exchange of information in cases where an individual had moved and declared taxes paid in another state. Mr. Wisner agreed but stated that the border states made up the bulk of the cases necessitating inter-state agreements. Mr. Spriggs added that if an agreement did not exist at the current time, one could be made up and, if signed by both parties, would become effective for all subsequent requests.

Mr. Drea asked if there was any document outlining the results of the security system used in the Comptroller's Division. Mr. Wisner responded that he could probably review security documents and extract this information for the Commission. Mr. Martin added that computer software security gives regular reports on attempts to breach the system, and errors in accessing information are distinguished from actual unauthorized attempts to access the system.

Mr. Drea concluded by expressing the Commission's wish to cooperate with the Comptroller's Office when Mr. Hanratty visited them and assured Mr. Wisner that the Commission had not intended to single out the Comptroller's Office. Mr. Drea noted that the specific incident in the Interim Report was mentioned because of its wide publicity in the press and the conclusion was drawn that security of personal records of state agencies should be reviewed.

The public hearing closed with a notice that the next hearing would be held on March 16th in Baltimore at 201 West Preston Street, Room L-3 at 10 A.M.

A short Commission meeting followed. The survey on record-keeping practices of state and private hospitals was distributed to Commission members. No major changes were made.

Discussion covered the meetings that Mr. Hanratty has been scheduling with state agencies. He informed members that responses had been favorable, with the liaison appointed in each agency varying from the Public Affairs Officer to the Executive Assistant to the Secretary.

Mr. Drea brought up the intention of the Commission to request deferment of bills (without taking a position) which directly impacted on the work of the Commission-such as the one introduced by Delegate Toth. Those bills of a clarifying nature would not be affected.

In conclusion, Commission members requested that Mr. Hanratty contact the Departments of Health and Mental Hygiene, Human Resources, Public Safety and Education and inform them that the Commission would like to have a representative from their departments testify at the next public hearing. Mr. Hanratty added that the Department of Transportation would be sending a representative. Mr. Tynes stated that representatives from the Department of Personnel would attend and Mr. Zee informed Mr. Hanratty that the State Archivist would also be there.

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MINUTES OF THE PUBLIC HEARING HELD MARCH 16, 1981

The second Public Hearing of the Governor's Information Practices Commission was held March 16, 1981 in Room L-3, 201 West Preston Street, Baltimore, Maryland. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman, Mr. John Clinton, Mr. Donald Tynes, Mr. Robin Zee, Dr. Harriet Trader, Senator Timothy Hickman, Mr. Albert Gardner, Mr. Dennis Sweeney and Mr. Wayne Heckrotte. Mr. Drea opened the Public Hearing with an explanation of the purpose and goals of the Information Practices Commission.

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The first witness to testify was Mr. John Bertak, Public Affairs Officer for the Department of Transportation (testimony attached). He was followed by Mr. William Long of the Motor Vehicle Administration (MVA) (testimony attached).

After Mr. Bertak presented his testimony, discussion followed on the Interim Report. Mr. Bertak objected to issue number 7 in the report. This issue dealt with the proposal that an agency publish annually a report of all record systems maintained by that agency. Mr. Bertak felt that this would be a significant administrative burden requiring the Department to hire at least two additional personnel.

In response to a question of the Commission, Mr. Long stated that certified copies of driver records are given to the police/law enforcement free of charge. Members of the public and insurance companies are charged $1 per copy.

Mr. Long stated that any individual can request a copy of another individual's record. In order to illustrate the range of information available on an individual's record, Mr. Long and Ms. Carol Shipley, another Motor Vehicle Admistration representative, called the Commission's attention to a sample record. Contained in that

record were the following items: soundex number, full name, address, personal description, class license, expiration date, convictions and address changes, etc. On the back of the form is an explanation of the abbreviations. Mr. Long added that MVA also has computerized vehicle registration records which include name, soundex number, and street address of the registrant, as well as tag number, title number, ID number and other vehicle information. Insurance records are not maintained on computer and thus require a manual search; the information is available for a $1 fee. Mr. Long explained that Maryland does not have the equipment that would allow the Department to give accessibility to insurance companies. This would require over $100,000 in modifications to existing equipment (not inclusive of costs of security measures).

Mr. Drea asked if this was the same information that a district court could pull up on a computer. Mr. Long replied that a district court can pull up a complete history. In the discussion that followed, the point was made that the record was not limited to three years unless the record had been expunged.

In response to a question from Mr. Tynes, Mr. Long explained that it is not necessary to have a driver's license number to get a copy of someone's record. The Department has search capability using the full name via the soundex system. Such a capability is primarily for law enforcement purposes.

Mr. Zee requested the conditions governing the written agreement used in the sale of certain computer tapes. Mr. Long responded that when a request for tapes is received by the MVA, the Administration sends a contract specifying the following: 1) the reason why the tape is being requested; 2) restrictions against resale; 3) requirement that the Administration be sent a copy of the material mailed; 5) requirement that names and addresses of any individuals be deleted upon request.

Mr. Long was then asked if MVA conducts follow-ups to make sure that tapes are being used in an appropriate manner. Although no specific procedure is followed requiring spot checks, Mr. Long stated that the Administration does receive copies of the mailings; furthermore, he noted that in the three years he has worked at MVA no request had ever been denied and no contract had ever been breached. The point was also made that lists are not often sold because of the cost (a complete copy of the registration list runs $20,000).

Mr. Bertak added that many companies could do better by obtaining lists from mailing houses. He also pointed out that the accessibility of information on drivers records has a beneficial side-recall notices on defective automobiles being one example. Mr. Drea asked if the title registration would contain information on a specific automobile where drivers license lists would not. Mr. Bertak responded affirmatively.

In the case of an automobile recall, Mr. Long explained that automobile manufacturers can supply to the MVA a tape input listing of the soundex numbers of the individuals whose records are requested. The Department can process this and return to the manufacturers the requested records on a computer tape. It is a print tape and in this sense allows a degree of security. The recipient of this tape cannot maintain this information by loading it into his own data base. In order to put this information into his own system, the recipient would have to print the tape and then key punch the information again. It would be feasible to do but the work involved serves as more of a deterrent.

Mr. Drea asked if specific information could be supplied upon request (e.g. a list of all drivers between 30 and 40 years of age). Mr. Long responded that such information could be provided but that such a request would require more time and therefore be more expensive.

Mr. Dennis Hanratty asked if an individual can request permanent deletion of his name. This could be done, Mr. Long said, as the names of the individuals requesting deletion would be placed on a separate list. However, in the case of a recall, the individual would be included on the list.

Mr. Sweeney asked whether there were other good reasons (besides recall notices) for allowing access to drivers records. Mr. Long cited the case of an accident where a need to obtain insurance information on the other vehicle involved exists or the case where an employer (e. g. a trucking company) needed to check the driving record of its drivers.

Mr. Hanratty asked for clarification of the "#9-Alcohol" designation on the back of the Maryland Drivers license. Ms. Shipley explained that it was used if an individual's driving privilege was revoked and that it was seldom used anymore. When licenses are renewed now, individuals must sign a consent statement on their application. In the past, the person being reinstated signed at that time that he was willing to take an alcohol test. The information would appear on an individual's record as a Number 9 restriction and the reason behind it would not show.

Mr. Drea referred to Section 16-119 which states that all medical information submitted is confidential and cannot be released in the absence of a court order. He asked if there were any exceptions to this provision. Mr. Long replied that this information was not included as part of the computerized record. Instead, a case file was maintained at the Medical Advisory Board. An individual can see his own file and can grant permission to an attorney representing him to view it. A law enforcement agency would need a court order.

It was observed that while criminal records are available for public access, medical records were regarded as confidential. Mr. Drea felt that both records could

contain damaging information. Mr. Bertak stated that convictions were a necessary part of the driving record. Medical information, in his opinion, was a more personal matter and there was no necessity that it be available at all. Mr. Bertak noted that conviction information was not arbitrary information put on the record by the MVA, the State Police or the Department of Transportation, but was added by the courts. The point was also made that a conviction record was required in order to assess points.

In response to a question from Mr. Drea citing the Public Information Act, 76-A, which requires that there be a designated custodian of the records, Mr. Long indicated that he thought at MVA Mr. William T.S. Bricker was official custodian; Mr. Bertak stated that Mr. Rhett Barkley was the records custodian for the Department of Transportation.

Mr. Sweeney asked if the driving record would show that a case was referred to the Medical Advisory Board. Ms. Shipley said that this would only be shown if the individual was suspended.

There were no further questions and the next witness, Mr. Lee D. Hoshall, was introduced. (Testimony attached)

Following Mr. Hoshall's testimony, Mr. Drea proposed that the State Archivist be heard out of order so that he could attend a hearing in Annapolis. Mr. Papenfuse, State Archivist, presented his testimony (attached).

Discussion followed on the ideal guidelines for striking a balance between personal privacy and the historical preservation of records. At what point would publication of records not be an embarassment or invasion of privacy? Mr. Papenfuse explained that by the time records are turned over to the Archives (usually 20 years

after the generation of the record), there should be very little that could not be opened immediately. If something was sensitive beyond the 20 years, Mr. Papenfuse indicated, then restrictions could be placed on it. Mr. Papenfuse added that under Maryland statute there are no restrictions unless they are legally mandated restrictions with respect to certain kinds of records. Decisions were developed through the scheduling process in relationship to the agency and in relationship to existing law. Mr. Papenfuse felt that it was more preferable to have a review panel to help promulgate rules and regulations rather than to set arbitrary time limits for certain categories of records. There are records, he believes, that should not be disclosed.

Mr. Papenfuse stated that the Archives operate under the Hall of Records Commission umbrella and has established guidelines to the records in its control. If an individual requests a sensitive record, the Archives has statutory authority under Article 54 to refuse disclosure.

Mr. Papenfuse noted divorce records before 1960 are located in the Archives, while after 1960, access is obtained through the courts. Senator Hickman wondered if statutory bases on which decisions were made could be defended in court. Mr. Papenfuse responded that if the scheduling process is done properly and records are assessed properly the Archives knows what restrictions are placed on them. He explained that the Hall of Records Commission-set up to represent all three branches of the government-has the discretion to open or close records turned over to the Archivist.

Senator Hickman asked if Mr. Papenfuse had a list of record systems. Mr. Papenfuse responded that the list would probably not be as complete as Senator Hickman would want, but that most departments have schedules.

Mr. Sweeney asked if Mr. Papenfuse or the Assistant Attorney General review requests under the Public Information Act as to whether access should be allowed. Mr. Papenfuse responded that this was not done routinely and that the issue had not arisen. Mr. Papenfuse noted that eleven thousand people use the Archives each year and 8,000 letters are answered. All deal with personal information. To date, he has not received a single complaint about invasion of privacy. Mr. Papenfuse said that records should be looked at series by series to determine at what point information should be available to the public if at all.

After Mr. Papenfuse completed his testimony, the Commission recessed for a short break.

Mr. Jay Kaplan, Chief Solicitor and Mr. David Young, Assistant City Solicitor, of the Baltimore City Solicitor's Office next appeared to respond to remarks made by Mr. Hoshall. They indicated that copies of the opinions sent to Mr. Hoshall would be forwarded to Mr. Hanratty. Mr. Kaplan thanked the Commission for stating its intention not to act as arbitrator. Mr. Hoshall, Mr. Kaplan stated, has a recourse under the law if he felt he was denied information. Mr. Kaplan emphasized that the City Solicitor has complied with the law in responding to Mr. Hoshall's requests. Mr. Kaplan referred to the estimate of costs which was sent to Mr. Hoshall (costs to provide the material Mr. Hosall had requested from the Police Department). Mr. Kaplan stated that the custodian of the records is allowed to set costs and that the City Solicitor's Office had no idea that an estimate had been quoted by the City Solicitor representing the Police Department.

Mr. Kaplan set forth the following dates concerning Mr. Hoshall's case:

May 8, 1980 Date of initial request to the Head of the Community Relations Commission.

May 13, 1980 Request referred to the City Solicitor's Office for response.

Oct 10, 1980	Mr. Benjamin Brown, City Solicitor, wrote to Mr. Hoshall apologizing for the delay and stating that Mr. Hoshall would have an opinion on the 14th.
Oct 14, 1980	The Opinion was delivered to Mr. Hoshall.
Nov 15, 1980	Letter from Mr. Hoshall addressed to Mr. Brown.
Dec 9, 1980	Response from the Deputy City Solicitor's office to Mr. Hoshall.
Dec 12, 1980	Follow-up letter by Mr. Young.

Mr. Young added that a letter was also sent January 7, 1981 in response to one from Mr. Hoshall dated December 24, 1980.

Mr. Young stated that the response of the City Solicitor's Office was based on an interpretation of the law and that there was no intent to deny Mr. Hoshall the information. Mr. Young stated that Section 3A of the Public Information Act sets forth certain exemptions to the availability of public records. Their office issued the opinion letter under 3A-4 which provides an exemption from disclosure where such public records are privileged or confidential by law. The opinion was also based on Mr. Young's reading of the Code of Baltimore City-Article 4, Section 18-E, which applies to complaints filed with the Baltimore City Community Relations Commission. Mr. Young stated that Mr. Hoshall had asserted that this article applied only to the investigation of acts of discrimination filed with the City Commission. In response, Mr. Young explained to the Information Practices Commission that the article was first adopted in 1966 and provisions of the code setting up the Police Complaint Evaluation Board were not adopted until 1975.

Mr. Young stated that it was his belief that the jurisdiction of the Community Relations Commission was expanded in 1975 to include investigation of alleged police brutality; furthermore, he felt that there is no such indication from the Code that Section 18 was intended to apply only to the investigation of acts of discrimination.

Mr. Young cited Section 18-E of the Baltimore City Code: "neither the Commission nor its staff shall disclose what has transpired during the course of any investigation nor shall the publicity be given to any negotiations or to the fact that complaints have been filed". Based on this, the City Solicitor's Office felt that the information Mr. Hoshall sought was exempted from disclosure.

Mr. Young added that Section 3B-1 of Article 76-A (Annotated Code of Maryland) provides for a right of denial to inspection by the record custodian if he believed that disclosure to the applicant would be contrary to the public interest. The City Solicitor's Office, Mr. Young maintained, held that disclosure of the Community Relations Commission records would be contrary to the public interst and would have a "chilling" effect on persons who might want to come forward and file a complaint alleging acts of police brutality.

Since the Commission had not had the opportunity to ask questions of Mr. Hoshall, Mr. Drea recalled Mr. Hoshall to respond to questions.

In response to Mr. Clinton's question concerning the topic of the research, Mr. Hoshall explained that it covered two levels. The first involved the interactions on the street between officers and citizens. More specifically, Mr. Hoshall indicated that he was interested in discovering the factors leading to the filing of complaints. The second level dealt with understanding the factors used by the Baltimore City Police Department to determine the outcome of the investigation. Mr. Hoshall indicated an interest in discovering the evidentiary factors that seemed to determine the outcomes of investigations 95% of the time in favor of the police. Mr. Hoshall stated that he had requested records disclosed not contain names, addresses and identifying information regarding the persons involved. Mr. Hoshall added that the argument used by Mr. Young citing the chilling effect resulting from

disclosure was an old and fallacious technique and that its only relevance was prior to a trial when leakages of information could prejudice an investigation. He added that the cases he had requested were all closed.

Mr. Drea and Mr. Hoshall discussed the time period which elapsed between Mr. Hoshall's initial request for information and the date he received a definitive response. Mr. Drea referred to the Proposal #1 in Mr. Hoshall's written testimony pertaing to a definite time limit in which agencies should respond to requests for information under the Public Information Act. Mr. Drea asked if Mr. Hoshall would agree with a proposal requiring an acknowledgement to a request for information in a brief period(5-7 days) followed by a definitive response (30-60 days). Mr. Hoshall agreed that that would be satisfactory.

Mr. Drea referred to Mr. Hoshall's testimony and the statement that the city had told him he would have to pay the hourly services (as part of the costs) of a sergeant to cull out personal information. Mr. Hoshall asserted that the Police Department is represented by the Baltimore City Solicitor's Office but that the person representing the Department does not appear to communicate with the rest of the City Solicitor's Office. He felt that the representatives present at the hearing probably didn't know that this was occuring. He agreed to furnish a copy of the letter from the Baltimore City Solicitor's Office delineating costs to the Commission. Mr. Hoshall added that there is obviously no uniform application of charges since other data requiring indirect cost to the department is often given to citizens free of charge.

In response to a final question from Mr. Drea, Mr. Hoshall affirmed that he had informed the City Solicitor's Office that his interest in obtaining the material was for a bona fide research project and added that the project was approved by the Graduate School of Criminal Justice at the University of Baltimore. The study

was to be conducted under the supervision of the department.

Mr. Kaplan and Mr. Young were asked to return to respond to questions from the Commission.

In response to Mr. Clinton, Mr. Kaplan remarked that he had no knowledge regarding who sent the estimate of costs out to Mr. Hoshall. Costs, he indicated, were left up to the individual departments. He acknowledged that some information was probably given out at no cost. Mr. Kaplan added that the "chilling" effect Mr. Hoshall had referred to was language taken from a decision by a United States Federal district judge. Mr. Drea asked Mr. Kaplan's opinion of the proposal he had made earlier that an acknowledgment to a Public Information Act request be sent out within 5 to 7 days and a definite response be issued within 30 to 60 days. Mr. Kaplan stated that he had no disagreement with such a proposal. If the proposal was part of the law, Mr. Kaplan stated that the city would comply.

Mr. Drea maintained that as he understood the legal position of the City Solicitor, the denial had been made on two bases: 1) as a requried denial because of a Baltimore statute holding the record to be confidential by law; 2) as a discretionary denial because the record fell under the adverse public interest section with regard to police investigations. Mr. Drea then asked Mr. YOung the following hypothetical question: if he was only bound by the discretionary denial provision and the request was clearly for a bonifide research project, would his decision have been the same? Mr. Young answered that there was a good probability that his decision would have been the same.

Mr. Sweeney asked where the chilling effect entered if all identifying characteristics were eliminated from the records. Mr. Kaplan responded that even if an individual knew that his name and address would be deleted from a record, he would

be reluctant to testify if such records were made public.

Mr. Sweeney questioned whether reports were available to the officers who were the subjects of the investigations. Mr. Kaplan responded that he did not know.

In response to a question from Dr. Trader concerning where the responsibility of the City Solicitor's Office ended and the researcher's responsibility began in terms of protecting the public and confidentiality, Mr. Kaplan stated that the city's responsibility ended where the law tells it.

Mr. Young made the final point that Mr. Hoshall has a remedy under the law. The function of the City Solicitor's office was only to interpret the law.

The next witness was Mr. Luther Starnes, Executive Assistant to the Secretary, Department of Human Resources. He presented a package of materials on issues of relevance to the hearing (attached). In addition to Mr. Starnes, Mr. Joe Farkas, Division of Data Processing; Ms. Lois Lapidus, Assistant Attorney General; and Mr. Ed McGarry, Division of General Services, attended from the Department of Human Resources.

Mr. Starnes explained that the Department provides benefits and services to low income persons. As a rough estimate, Mr. Starnes stated that the Department has between 350,000 and 400,000 case records containing personal information.

Senator Hickman asked if the Department had a catalog of record systems including information on the nature of the subjects, security, etc. Mr. Starnes replied that this question was among a list of 27 questions sent by Mr. Hanratty and indicated that answers would be ready by April 15th. He added that the department is in the process of computerizing the Welfare Eligibility Process State-wide. Mr. Starnes

indicated that eighteen of the Department's records were now computerized. He noted that there are several forms within each program which contain some personal information. They are being compiled and a catalog of the forms will be provided to the Commission.

In response to Mr. Heckrotte's inquiry as to whether the welfare system is locally administered, Mr. Starnes explained that while there are local departments of social services, the employees are all state employees. Mr. Starnes stated that there is a local Social Service Board which appoints a director, and that, in most cases, there is no local money involved. The state, he indicated, is responsible for regulations and guidelines on records; each local unit may have its own variation of a record system but it must meet the guidelines of the state.

Discussion followed on the subject of automation and whether this would cut down on repetition and inconsistencies in data. Mr. Starnes cited the Automated Income Maintenance System (AIMS). Using Social Security numbers of an applicant, the department can now access employment security wage records and verify information right in the computer terminal. He felt that automation would cut down on the duplication of forms but would provide additional information to the Commission.

Senator Hickman inquired about security measures at individual terminals and the number of these terminals. Mr. Farkas could not supply a specific number. He explained that the security system now requires two things: a password and (unintelligible). There are currently two password systems, only one of which is changed. Mr. Farkas was sure that a user ID was also required. Mr. Starnes added that the legislative auditor had just finished an audit of the department that addressed security questions, and that this audit was available.

Senator Hickman asked if the Secretary's Office had received complaints about

the misuse of information. Mr. Starnes responded that it had not and he then explained that the department is steadfast in not sharing particular information on welfare recipients. Mr. Starnes stated that many people believe that large numbers of recipients cheat and that therefore the Department gets welfare fraud allegations on a regular basis. He indicated that the allegations are investigated, but that the results were not shared with anyone. Indeed, he said, the Department does not even state no fraud occurred because that would indicate that a person was a welfare recipient.

Senator Hickman explained that constituents often come into his office disagreeing with the Social Services rulings. Senator Hickman asked if the Department has guidelines governing the release of information to elected representatives. Mr. Starnes responded that if a client goes to an elected representative and lays out the facts of his case, the Social Services Office will discuss the case with the representative. Anyone who goes to a public official, Mr. Starnes maintained, has for that specific purpose waived his desire for confidentiality. Mr. Starnes added there was no written opinion covering this scenario.

In response to a question from Mr. Sweeney, Mr. Starnes stated that he did not think that a state police officer with appropriate identification could examine welfare records. Ms. Lapidus added that under Federal regulations, the Department could only disclose information to other agencies that administer funds on a needs basis. Mr. Starnes stated that if a person applied for welfare after having lost his job, it first has to be determined if he is eligible for unemployment before he would obtain welfare assistance. Mr. Sweeney asked if the interchange of information between state agencies was a problem. Mr. Starnes replied that he was not aware of any such problems.

In response to a question posed by Mr. Sweeney, Mr. Starnes stated that the

Department does not actively review the local offices to insure that their record systems comply with Federal and State law. Mr. Starnes indicated that the Department does perform quality control reviews on error rates in the local offices.

Mr. Clinton brought up the topic of adoption records. Mr. Starnes stated that at the moment adoptees do not have access to records pertaining to information on their natural family. He noted that the General Assembly was examining currently a bill that would authorize access.

Discussion followed on the child abuse registry. Mr. Starnes expressed his feeling that concern exists that reports can get into the registry without investigation. Mr. Starnes indicated that the report of a private citizen would not necessarily enter the registry, but that reports from a physician, school official, or police agency would be entered. Ms. Lapidus explained that not all names involved in a child abuse incident enter the registry. Access to the list is provided to social service personnel, education personnel and others in that general nature. An educator can call and get a name if it is on the confirmed abuse list or on the list of incidents where it was impossible to ascertain what actually happened. Ms. Lapidus also indicated that in cases of confirmed abuse, the individual can appeal and discover whether he can seek judicial review on the determination by the agency.

Mr. Tynes noted that the Department of Human Resources received considerable federal funding and asked about the normal federal reporting requirements. Mr. Starnes replied that statistical reporting was done on a quarterly basis and that the Department is reimbursed retroactively from the Federal Government. He indicated that Quality Control reporting is conducted every 6 months. Mr. Starnes elaborated on the issue-stating that a list of recipients is not required to support expenditures. He stated that the only occasion an individual's case is seen is if a case is pulled out as a sample for Quality Control.

Mr. Clinton asked about employee training in the use of the Citizen Response Plan. Mr. Starnes replied that it was a new plan. Due to the size of the Department, the administrative setup provides for direct organizational feed. Everything goes through the Executive Staff for discussion and the heads of each agency are charged with implementation. Mr. Starnes stated that because the department deals directly with the delivery of services to citizens, it is not difficult to notice a division that may not be following too closely their responses.

Mr. Gardner asked if the Department gets any requests for personal information from the Federal Government. Mr. Starnes replied that the only request involves review of the Department's Quality Control sample.

Mr. Heckrotte asked about data exchanged with Social Security under BENDEX, such as a record of people receiving Welfare Payments or Social Security. Mr. Starnes explained that Social Security only gets involved in that situation as a benefit agency. He indicated that the department shares information with Social Security but that Social Security has nothing to do with the supervision of the Department's program.

A five minute break was held.

Ms. Caroline Stellman, Executive Director of the Consumer Council of Maryland, was the next witness to testify. Mr. Stellman advocated patients in State medical facilities being permitted to examine and copy their own records. Ms. Stellman quoted the 1980 survey conducted by the Health Research Group of Washington, D.C., which discovered that all but seven states allow some access, generally through a mental health statute, to patient records by the person in interest. She indicated that Federal facilities allow the right to access and copy (for a fee) and have not found it to be a problem. In fact, Ms. Stellman said, Federal facilities studies with

mental health patients have shown anxieties and tensions lessened by the ability to look at health care records.

Ms. Stellman stated the Consumer Council's position that there would be a more open patient-physician relationship if patient access was granted. The patient would be able to see if his record was accurate, immediate emergency information would be available if necessary, there would be more continuity of care, and the patient could moderate the costs of health care.

Ms. Stellman added that there are four bills in the General Assembly to modify patient access to health care records in Maryland. She noted that the Council also maintained that if a patient has the right to examine his own records then he should have the right to correct and ammend them. The Council also supported the position that a patient should be permitted to insert a dissenting comment in the record if the health facility refuses to amend the record. Ms. Stellman expressed the Council's view that the patient should be notified of the right to access and of the necessity for a charge if he uses that right. She stated that, if a statute is passed, hospitals should have a definite time frame for responding to a patient query and a mechanism should be set up so that if there is a problem, the complaint can be handled in a uniform manner.

In response to a question raised by Mr. Heckrotte, Ms. Stellman stated the reasons given by health care facilities for not providing access and her responses to these reasons as the following:

-Patients won't understand their records. (This is in opposition to the principles of informed consent.)

-Potential harm. (Has not been documented.)

-Increase in malpractice suits. (HEW Secretary's Commission on Medical Malpractice

)

found that there were fewer suits with open records.)

-Frequency of requests. (Hasn't happened in Federal facilities or states that allow access.)

-Cost (Appropriate charge-it pays for itself.)

-Quality and value of records-records won't reflect the true thoughts. (If the records aren't accurate-the physician is more open to malpractice suits and records might be written more carefully with open records.)

Mr. Drea asked if the Consumer Council's Report addressed the distinction between hospital records and attending physicians' records. Ms. Stellman responded affirmatevely. She noted that two current bills deal only with health care facility records as these were thought to be easier to open. Ms. Stellman expressed the view that both types should be open and stated that this was reflected in the Council's report. However, she added, no distinction was made in the report between public and private medical care facilities. Ms. Stellman stated that she would like to see the Commission include both public and private institutions, as a full health care record probably goes beyond the state institution.

The next witness was Ms. Beatrice Weitzel, Executive Assistant to the Secretary, Department of Health and Mental Hygiene. Ms Weitzel stated that a written reply would be forwarded to the Commission. Ms. Weitzel said that the Department was governed by the Maryland Code, a number of rules and regulations, policies developed within the Department, various acts and guidelines (NIDA-National Institute of Drug Abuse) and also by a number of court decisions. She stated that the major areas in the Department where the Interim Report of the Commission impacts involved patient/client records, vital records for state residents, licensing and permit records, medical assistance program information, laboratory tests and inspections, and inspections and surveys of hospitals, nursing homes and related institutions and public health information.

In the area of Medical Records, Ms. Weitzel said that according to information received from the Assistant Secretary for Mental Health and Addictions, there is currently no problem with making information available to patients. However, the Department does have reservations regarding copying of this information. There is concern that certain items in medical records not be available to the patient, such as comments of counselors and decisions by the medical director as to patient care or prognostics. It is felt that disclosure of this information would be counter-productive to the patient's progress and should be kept in file for use in treatment.

Ms. Weitzel added that the Department has information relative to persons in programs such as drug abuse, alcoholism, and quarter-way and half-way houses. Many use local health departments for clinic services-preliminary help in drug abuse/ alcoholism or information for family planning. She stated that the personal records of these programs are all confidential. The Department also has records of persons who were detained by court order in institutions and are covered under very specific areas through Supreme Court decisions and specific guidelines.

In the area of Vital Records, Ms. Weitzel stated that the Department maintained information on births, marriages, adoptions and deaths, and that these records are covered in the Code and in Departmental regulations. Regarding birth records, Ms. Weitzel said that the information is available only to the individual or to either parent if their name appears on the original certificate. On the state level, marriage information is available upon written request only to both parties involved. On the county levels, marriage information is covered under Clerk of Court orders and varies from County to County. Death information is available to the immediate family, to the persons designated to act, or to a person with a court order. Ms. Weitzel indicated that this information is only mailed to a proper address and is not handed to someone visiting the office.

Ms. Weitzel stated that information pertaining to medical care recipients was shared with the Department of Human Resources. She stated that Human Resources determined eligibility while the Department of Health and Mental Hygiene administers the care and handles bill paying. This information, she asserted, is computerized and security is ensured. Ms. Weitzel stated that the computer facility is supervised and identification codes are used. Password codes are at various levels-certain information is available to the person entering additional information. There is other information available only to another person with the proper password. In addition, a great deal of the information is in code and even if access to a printout sheet was available, it would mean very little.

The Department has a number of licensing boards which maintain information on a number of professional people. Ms. Weitzel stated that this information is controlled by the respective boards. Some supply rosters for public use at a charge which they determine. Some of the information is not public such as grades and information on allegations of investigations (until a determination has been made of the charges).

Ms. Weitzel indicated that the Department laboratories are privy to sensitive information. Such information can only be given out to the submitter of information. The Department does not give out information on labs licensed by them, locations, number of tests and other related facts.

Ms. Weitzel stated that hospital and nursing home inspections conducted by the Department of Licensing and Certification are public information with the exception of any personal patient information that is in the records.

The Department has tried through not only the Citizen Response Plan but through individually developed procedures to determine that proper care is taken to ensure

that personal information is protected while at the same time permitting access to public information.

Ms. Weitzel indicated that the Department currently is reviewing its policies regarding the retention, distribution, and destruction of records. She stated that the Department would provide a list detailing points of disagreement with the Interim Report. Ms. Weitzel asserted that in general, the Department was pleased with the Interim Report and felt it does address a need.

Mr. Drea asked if there were written Departmental policies covering the areas addressed by Ms. Weitzel. Ms. Weitzel indicated that such written policies did exist and that they would be sent to the Commission with the other materials.

Mr. Sweeney asked if the Department thought that there was a need or that the law should be changed to allow the use of information for legitimate public health research efforts. Ms. Weitzell replied that she did not know, but would find out. Secondly, Mr. Sweeney questioned if it made sense on the state level to deny access to marriage license records when one can go to the county and get access. Mr. Sweeney asked if this policy should not be consistent. Ms. Whitzell responded that the Department feels its regulations are consistent. She indicated that throughout regulations, persons of primary interest should be allowed access. Mr. Sweeney summarized the Department's position as being the maintenance of consistency between different types of records in the possession of the Department even though counties may be following different policies.

Mr. Gardner asked if Ms. Weitzel was addressing information collected and retained in a central location. Ms. Whitzell replied that there is one central collection point for Vital Records. That information is completely separate from information collected for medical care programs.

Ms. Weitzel stated information pertaining for patient records is maintained at each hospital. She added that Department regulations pertain to whatever the area is and to anything within the Department. These regulations may overlap into another agency. In such a situation, she asserted, that agency has the opportunity to add input at the time of promulgation. When a regulation is published in the Maryland Register and becomes part of operating procedure, it applies department-wide. The regulation doesn't apply to parties providing information to the Department but only to those over which the Department has jurisdiction - such as marriage license information. The Department does not have jurisdiction over clerks of the counties.

Mr. Sweeney questioned if the Department's policy regarding medical records at state institutions is in writing. Ms. Weitzel replied that these policies were not in writing and were being examined at the present time.

Mr. Sweeney asked if the compensation paid by the State to doctors was regarded as public information. Ms. Weitzel replied that reports are prepared at the end of each year which give the total amounts to the providers. If inquiries are received as to individual providers they normally are handled with the Assistant Attorney General in that area. Such information is available to the public.

In response to a question from Mr. Drea, Ms. Weitzel indicated that all licensing boards have regulations in written form and that copies would be sent to the Commission within a week.

Discussion followed over the issue of patient access to comments in records and concern over the copying of records. Ms. Weitzel explained that it is often difficult to pinpoint the problem with, for example, patients suffering from mental disorders. As a consequence, some comments are highly speculative. Access to these comments might restrict what was put in a patient's file. At the same time, a physician might

not want a patient to examine a record if the outlook was not favorable. Mr. Drea questioned the difference between the medical patient whose prognosis was unfavorable and the mental health patient with a similar prognosis. Ms. Weitzel suggested that the issue should be dealt with by the psychiatrists themselves who could spell out their objections to the Commission.

Mr. Heckrotte wondered if any studies had been done to see how many patients are actually interested in looking at their records. This, he suggested, might be relevant to the cost objection mentioned by Ms. Stellman. Ms. Weitzel responded that she did not know. The Department had run into situations, however, where the cost of reproducing records requested in class action suits was a problem.

Mr. Sweeney asked if there was a policy regarding access to personal records by law enforcement personnel with proper identification. Ms. Weitzel answered that in certain situations, personal records could be available. If a charge of patient abuse had been made, the State Police would be asked to investigate. Investigators would be allowed access to the person's file with the person's knowledge. There may be instances of other allegations or incidents pertaining to the investigation. However, Ms. Weitzel added, for release of any other information other than that on the Department's own personnel, a court order would be required.

There were no further questions and the Public Hearing was concluded.

Mr. Drea held a short Commission meeting. The next meeting was set for April 20, 1981. (This has since been changed to April 27, 1981.)

DHR DEPARTMENT OF HUMAN RESOURCES
STATE OF MARYLAND 1100 NORTH EUTAW STREET BALTIMORE, MARYLAND 21201

OFFICE OF THE SECRETARY TELEPHONE:

TO: Governor's Information Practices Commission

DATE: 3/13/81

FROM: Luther W. Starnes
Executive Assistant to Secretary

RE: Hearing, March 16, 1981

We appreciate the opportunity to meet with you today for the purpose of reviewing, together, the record-keeping practices of the Department of Human Resources.

The Department of Human Resources is a multi-faceted department engaged, almost exclusively, in the provision of benefits and services to citizens of Maryland, most of whom are poor and low income persons. These services, provided through the Employment Security, Income Maintenance, Social Services and Community Programs administrations include unemployment insurance, job training and placement, welfare, food stamps, medical assistance, energy assistance and a wide variety of social services including adoption, foster care, protective services, home care, etc.

The programs of DHR are financed and regulated in part by four federal agencies: the departments of Labor, Health and Human Services, Agriculture and the Community Services Administration.

Because of the complexity and personal nature of these programs, the requirements for large numbers of forms, confidentiality and response mechanisms are great.

To assist the Commission in understanding the record-keeping and information practices in operation within DHR the following materials are attached:

- DHR Organization Chart
- DHR Manual Entry - Guidelines for the Storage and Disposal of Record Material
- Applicable Confidentiality laws and regulations relating to DHR programs
- DHR Citizens Response Plan

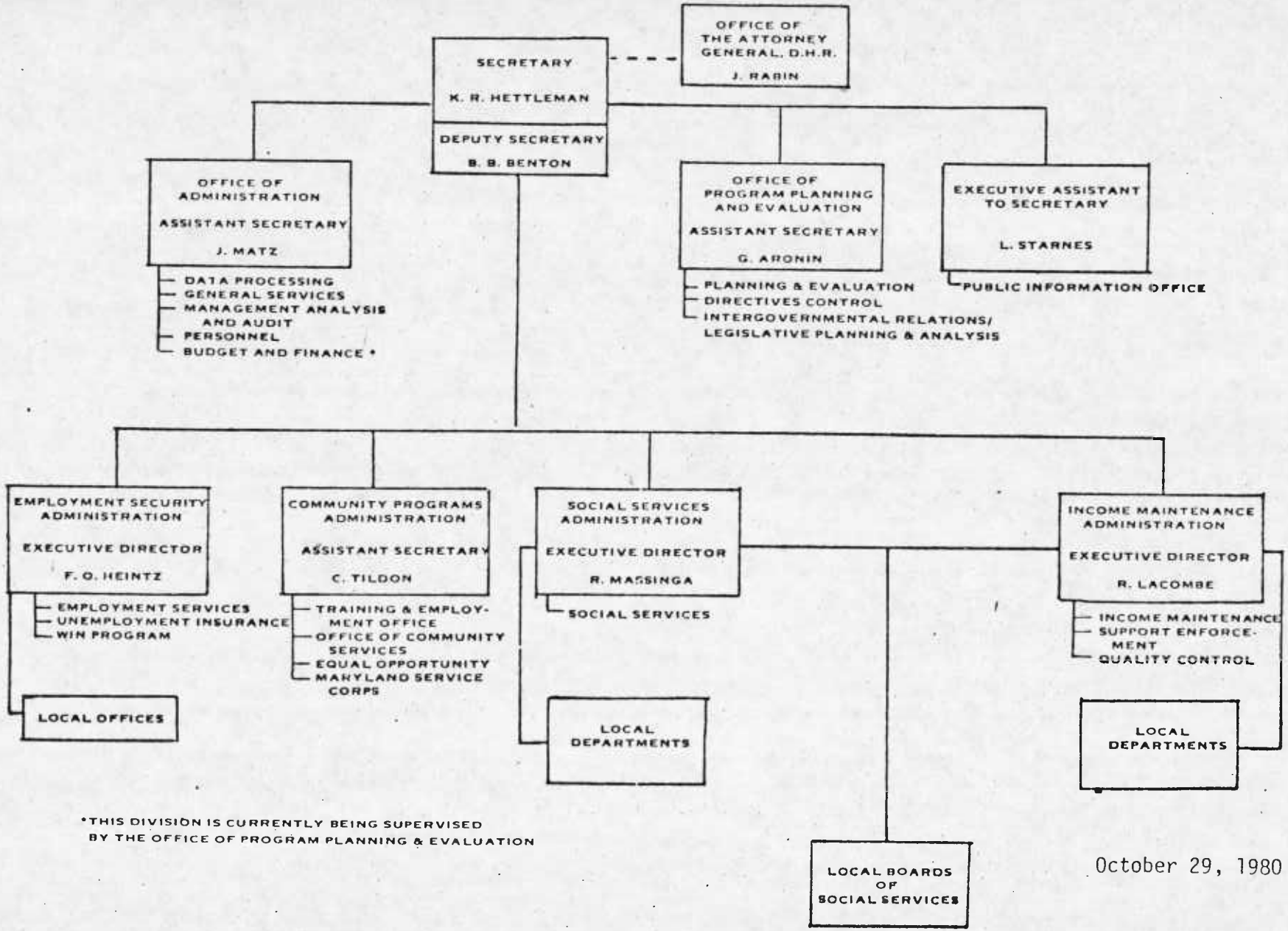
KALMAN R. HETTLEMAN HARRY HUGHES BILL B. BENTON

Appropriate administrative staff are with me today to answer specific questions you might have, representing the divisions of General Services and Data Processing and the Attorney General's Office.

It is our intention to provide written responses to the 27 questions addressed to us by Mr. Hanratty as soon as possible.

Thank you.

ORGANIZATION OF THE DEPARTMENT OF HUMAN RESOURCES



*THIS DIVISION IS CURRENTLY BEING SUPERVISED BY THE OFFICE OF PROGRAM PLANNING & EVALUATION

October 29, 1980

DEPARTMENT OF HUMAN RESOURCES

Division	Division	Dept.	Part	Subject	Page
GENERAL SERVICES	55	DHR	6	•1	1
Part Title: RECORD RETENTION AND DISPOSAL	Release Number: 33		Distribution: I		
SUBJECT: GUIDELINES FOR THE STORAGE AND DISPOSAL OF RECORD MATERIAL	Effective Date: 8/1/78		Issue Date: 7/7/78		

.01 PURPOSE

The purpose of this directive is to establish procedures for the retention and/or destruction of record material for all constituent agencies of the Department of Human Resources.

.02 REFERENCE

A. Records Management Manual, Department of General Services, Hall of Records Commission, Records Management Division (Revised 1976)

B. Federal Register, Guide to Record Retentions Requirements (Revised as of January 1, 1976)

.03 DEFINITIONS

A. Active File

A file that is used as a reference in the conduct of current business.

B. Records Management

The control of a document that relates in some way to the conduct of business of DHR.

C. Records Retention Schedule

An approved system established to maintain essential records, which provides for the destruction of specified records that are not essential to an agency's operation after a specified period of time, or for the permanent retention of records considered to be of enduring value.

D. Retention Period

The length of time that must elapse before specified records may be destroyed.

E. Record Material

Any material (regardless of its physical form) received or created in connection with the transaction of the business of DHR.

.04 RESPONSIBILITY

A. The Director of the Division of General Services, or his designee, shall be responsible for the economical and efficient management of DHR Record Material, including the establishment of records retention schedules, in order to insure prompt and orderly disposal of record material not required by the operation of the Department.

B. The heads of all constituent agencies shall be responsible for providing the Division of General Services with a current list of all record material which must be retained and the specific period of time for which it must be retained. This list must include the form number, the name or generic term used to describe the form or piece of correspondence, and the length of time the item must be kept in storage (retention period). Based on the lists submitted, the Division of General Services will prepare the record retention schedules. The heads of all constituent agencies shall be responsible for providing the Division of General Services with an updated schedule providing for addition of new forms and deletion of obsolete forms no later than December 31 of each year.

C. The retention requirement and disposal of state records are governed by record retention schedules prepared by each Department of the State of Maryland with the assistance of the Records Management Division of the Hall of Records Commission and approved by the Board of Public Works. It will be the responsibility of the Division of General Services to prepare these schedules and to obtain the approval of the State Archivist and the Board of Public Works to implement these schedules.

D. The Director of the Division of General Services, or his designee, will be responsible for the retention of all record material located at 1100 N. Eutaw Street in such a manner as to ensure its retrieval in a reasonable amount of time. The records maintained at other locations will be retained and disposed of according to approved schedules by the local director or chief administrative officer, or his designee.

E. The Director of the Division of General Services, or his designee, shall be responsible for the destruction of DHR record material maintained at 1100 N. Eutaw Street in accordance with the retention schedule as approved by the Board of Public Works. Those records maintained at other locations will be disposed of according to the approved schedules by the local director or chief administrative officer, or his designee, with a notice of the material disposed of being forwarded to the Division of General Services at 1100 N. Eutaw Street for reporting to the Hall of Records.

These procedures become effective August 1, 1978.

DEPARTMENT OF HUMAN RESOURCES

Division	Division	Dept.	Part	Subject	Page
General Services	55	DHR	6	• 2	1
Part Title: Records Management	Release Number: 42		Distribution: I		
SUBJECT: SSA - Case Records	Effective Date: 7/1/79		Issue Date: 7/20/79		

.01 PURPOSE

This directive provides the procedure for the management, retention and destruction of all case records maintained in local departments of social services, but particularly for records of income maintenance, social services, and Title IV-D programs.

.02 REFERENCE

Annotated Code, Article 54, Section 1 and 2

The General Assembly of 1953 enacted into law (Acts of 1953, Chapter 436) the following provision: "It shall be the duty of each State agency to develop a continuing program for the economical and efficient management of its records, including the establishment and/or revision of record retention schedules, in order to insure prompt and orderly disposal of records not required by the operations of the agency. Prior to becoming operative, all such retention schedules must receive the approval of the Hall of Records Commission, but schedules providing for the destruction of records must also receive the written approval of the Board of Public Works."

The 1978 Maryland General Assembly amended Chapter 436 providing the Hall of Records Commission full authority to approve record retention schedules. Under this amendment, the Board of Public Works is no longer required to approve retention schedules.

Records Management Manual, Records Disposition, Department of General Services, Hall of Records Commission, Records Management Division, (Revised) 1978.

Federal Register Guide to Record Retention Requirements (Revised) January 1, 1976.

.03 DEFINITIONS

A. "State Records Center," a State operated warehousing operation administered by the Records Management Division of the Hall of Records Commission and located in Waterloo, Maryland on Route #175 near U.S. Route #1. Procedures for use of this Center are detailed in the Records Mangement Manual referenced above.

B. "Retention Schedule" a list of records indicating how long they are to be kept and when they may be destroyed. The retention schedule for case records in local departments of social services is Number 185.

C. "Retired Record" a folder containing any information not needed to establish current eligibility.

.04 PROCEDURE

A. Active Case Records

Beginning July 1, 1979, the following procedure for managing case records will be followed in local departments of social services.

(1) Active case records for all programs will be maintained within the appropriate service unit. Local departments who presently maintain a central file for active cases only may continue to do so under the following conditions:

a. Permission to continue a central file for active case records must be requested in writing on January 1 of each year to the Director, SSA.

b. A plan for transferring active records for all SSA programs to their appropriate unit must be included in the request.

c. Closed case records must be maintained in a separate closed record file, by case number and flagged for shipment to the State Records Center.

(2) A retired record will be maintained for active PA case records.

Inasmuch as retired records may be destroyed after five years from date of origination and in order to avoid annual purging of each retired case folder, the following procedure will be followed. Effective July 1, 1979, staple shut or otherwise bind the existing retired record for each PA case. Initiate a new folder in front of the old one for documents which are retired during the next five years, i.e. til June 30, 1984. At that time, destroy the bound folder; bind the folder of

documents retired since July 1979, and retain for five years. Initiate another new five year folder in front of the old one and continue the procedure. If a local department has no need for access to the bound folder, it may be shipped to the Record Center.

The following forms will be retired for five years and then destroyed.

DHR/SSA 531A : APPLICATION FOR EMERGENCY ASSISTANCE

490A : APPLICATION FOR PUBLIC ASSISTANCE - ADULTS ONLY (GPA & GPA-E)

490B : APPLICATION FOR PUBLIC ASSISTANCE - FAMILIES WITH CHILDREN (AFDC & AFDC-UF)

401A : "FRAUD STATEMENT"

FS 35 : FOOD STAMP APPLICATION SUPPLMENT

903 : ASSIGNMENT OF SUPPORT RIGHTS

DESS/SSA FS 1 : APPLICATION FOR PARTICIPATION IN FOOD STAMP PROGRAM

DHMH 1158 : APPLICATION FOR MEDICAL ASSISTANCE

The following forms should be retained under special circumstances:

DESS/SSA 491 : "Additional Facts or Changes for Simplified Eligibility Determination" (This form should be retained in its original form when it has been signed at the bottom, on the reverse side, by the recipient.)

226 : "Overpayment Record" (All such forms found in the record which have been completed and indicate circumstances relating to the establishment of an overpayment should be retained.)

DHR/SSA 494B : A single yellow form commonly referred to as a "GOLDENROD", used by caseworker to document actions taken on a specific case, should be retained when caseworker has included notations pertaining to fraudulent activity on part of recipient or suspicions, by the caseworker, of false information tendered by the recipient.

All other documents may be destroyed except that original documents provided by the client, e.g. birth or baptismal certificates, marriage licenses, etc. should be returned to the client.

Retired material, listed above, should be filed in the retired folder after each reconsideration. All other material except original documents should be destroyed.

B. Closed Case Records

(1) All closed records will be maintained on a fiscal year, rather than on a calendar year beginning with case records closed in fiscal year 1980.

(2) Beginning with case records closed in fiscal year 1980, all closed case records will be maintained in a central closed record file by case number for one year prior to the current fiscal year and then shipped to the State Record Center of the Records Management Division of the Hall of Records Commission.

(3) Local departments will identify closed case records or parts thereof with a 3/4 inch sticker on the tab of the record jacket. A purple dot for records closed in odd numbered fiscal years (FY '81, '83, '85, '87, etc.) and an orange dot for records closed in even numbered fiscal years (FY '80, '82, '84, '86, etc.).

Foster care child's record will be further identified on the tab of the record jacket with an "FCC" symbol.

(4) Parts of a case record, i.e. a particular service whether in IM, Social Services, or IV D will be transferred to the central closed record file immediately upon closing, except that closed adoption records will be maintained in a separate locked file. Adoption child's record will be shipped to the State Record Center in sealed boxes or envelopes where they

will be retained for an appropriate period. Closed foster care child's records also will be shipped in separate boxes, but need not be sealed.

The Programs Manual on adoption is being revised with instructions for including with the closed adoptive child's record, information regarding the adoptive child's natural family.

(5) The use of maintaining a system of duplication "dummy records" will be discontinued by the effective date of this procedure. Instead, local departments of social services will be required to establish a log system to keep track of records transferred from the department to other social services departments and to other agencies, including the State Record Center. A sample log sheet is attached to this procedure. Terms in the column headings are defined in the Records Management Manual. This procedure does not pertain to "dummy records" for active cases in foster care.

SPECIAL INSTRUCTIONS

(1) Supervisors will be responsible for assuring that no record is sent to closed files without an appropriate sticker. When a case is reopened and returned from the Central Closed Record File to the active file, local management may elect to remove the colored dot or to leave it on until the record is closed again. At that time, the supervisor will ensure that an appropriate colored dot is on the folder. If it is, the folder is simply returned to the Central Closed Record File. However, if the record is being closed, for example, in an odd year (purple) and was previously closed in an even year (orange), the supervisor or designee simply overlays the other color and transfers the record to the Central Closed Record File.

(2) Records retained for one year in your file must be out of the files before a third fiscal year begins. It is essential that a given fiscal year's records be pulled from closed files on or before June 30 of each year, since on July 1 the same color sticker will again be used. It would be advisable to begin packing records for shipment on June 1 or sooner, if necessary. Baltimore City's volume is such that one year's closed cases occupies an entire room. Consequently, pulling closed records to avoid overlapping is not critical, they simply begin closing records to another closed file room.

All records closed prior to FY '80 may be shipped to the Record Center after June 30, 1979 by arrangement with social services field staff.

(3) Foster care child and adoptive child records must be placed in separate boxes and marked appropriately for retention at the Center. Since foster care child's records are to be kept with all other closed case records in a Central Closed Record File, and since they must be segregated in separate boxes for appropriate retention at the Record Center, local departments should continue to identify them as they have to date, namely, to mark the tab of a child's record with an "FCC". Upon closing, the foster care child's record should have two identifying marks:

a. A color dot, purple or orange and

b. An "FCC"

The closed adoption child's record needs no identifying mark other than the colored dot; since they are closed to a separate locked file and can be placed in separate sealed boxes for shipment to the Record Center, directly from the locked file.

Department of Human Resources – Records Management Procedure

Fiscal Year: _____

STANDARD CLOSED CASE RECORD LOG SHEET FOR LOCAL DEPARTMENTS OF SOCIAL SERVICES

Year Closed	Case Number	Case Name	Accession Number	Range Number	Section Number	Box Number	Service Category	Date Requested from Records Center	Date Received from Records Center	Date Returned to Records Center
1	2	3	4	5	6	7	8	9	10	11

DHR 561 (8/79)

INSTRUCTIONS FOR FORM DHR 561

Tha DHR form in this book has been designed for use in local department master fila units. The primary purpose of this form is to provida a standard method of logging requests for closed case records from the State Records Center.

This form should not be sent to the State Records Center. The appropriate transmittal form and instructions are identified in the Records Management Manual, Records Disposition, Department of General Services.

The column headings on this DHR form should need no explanation, excapt items 4, 5, 6, and 7, which are numbers to identify the location of tha case record at the Stata Records Center. These numbers will be forwarded to you shortly after you box and ship each batch of closed case records to the Records Center.

- Item 7 — Tha box number is the number your office affixes on the outsida of a given box of closed records.
- Item 8 — Service category tells you whether you requested the entire case record or just one or two particular services; for example, MA or Foster Cara, etc.
- Items 9 & 10 — It is important for you to know how long it takes to retrieva a record from the Center. The Records Center is expected to return a record within two working days from receipt of the request.

CONFIDENTIALITY PROVISIONS

This list is not comprehensive. It does include, however, most provisions affecting majory Departmental programs. A more complete list will be submitted later.

State - Statutory and Regulatory

Art. 76A, §3(c)(ii)
Public Information Act
Prohibits release of "welfare" records unless other provided by law.

Art. 88A, §6(a)
Prohibits release of any information concerning any applicant for social service or income maintenance program.

Art. 88A, §5(a)
The use of any record furnished by the Department to another agency shall be limited to the purposes for which it is furnished.

Art. 88A, §5A
Any records relating to absent parents shall be available only to certain persons.

Art. 95A, §12(g)
Employers' unemployment insurance records maintained by the Employment Security Administration shall not be open to public inspection.

Regulation 07.01.02
Confidential nature of records
Describes under what conditions information can be released.

Regulation 07.02.10.09
Mandates that all information with regard to single parent services be maintained confidentially.

Regulation 07.05.02.04G
Employment Service Job Bank information shall be kept confidential.

Federal - Statutory

(For each statutory provision, there are several related regulations.)

7 USC §2020(e)(8)
Provides for safeguarding of information obtained from applicants for benefits under the Food Stamp Program.

42 USC §320(g)(7)
Provides for safeguarding of information obtained relating to old age assistance or medical assistance for the aged.

42 USC §602(a)(9)
Limits disclosure of information obtained in connection with Aid to Families with Dependent Children Program.

42 USC §802(a)(6)
Provides for safeguarding of information concerning applicants or recipients of services to the aged, blind, or disabled.

42 USC §1202(a)(9)
Provides for safeguarding of information concerning applicants or recipients of aid to the blind.

42 USC §1352(a)(9)
Provides for safeguarding of information obtained from applicants for or recipients of aid to the permanently and totally disabled.

42 USC §1369(a)(7)
Provides for safeguarding of information obtained from applicants for or recipients of medical assistance.

DEPARTMENT OF HUMAN RESOURCES

Division	Division	Dept.	Part	Subject	Page
Public Information	5	DESS	1	1	1
Part Title: Citizen Response	Release Number: 1		Distribution: I		
SUBJECT: CITIZEN RESPONSE PLAN	Effective Date: 2/23/81		Issue Date: 2/23/81		

Each agency is encouraged to move beyond the basic provisions of the Plan, where necessary, for the purpose of developing its own citizen response procedures.

I. TELEPHONE COMMUNICATIONS

1. Each agency/office must ensure that its telephone system is adequate to promptly and efficiently handle all incoming and outgoing calls. All telephones shall be adequately covered at all times during normal working hours.

2. Each agency/office should provide all of its employees charged with responsibility to the public with up-to-date training to include the mechanics of the system, proper courtesy, prompt attention to calls, and the use of directories to forward callers to the appropriate parties.

3. Records of calls or their details need not be recorded unless not immediately completed or, in the opinion of the recipient, the subject matter warrants recordation.

4. Calls not immediately responded to will be recorded and referred for response using an appropriate telephone message memorandum noting the caller's name, telephone number, date, time of the call and, if possible, subject matter. This record must be retained until a response has been made to the inquiry. All initial calls should be responded to as soon as possible and no later than 24 hours.

5. Telephone records should be maintained in such a way as to facilitate review of any "open matter" by any other person. Management shall periodically review such "open matter" to appraise adequacy of response action.

II. WRITTEN COMMUNICATIONS

1. All written communications must be date stamped immediately upon receipt showing, at minimum, the name of the agency/office and date.

2. All written communications requiring response should be responded to or acknowledged within ten(10) business days of receipt. If the communication cannot be properly responded to within ten business days its receipt should be acknowledged in writing. This response should identify the individual responsible for reply, the reason for the delay, the telephone number of the individual assigned the responsibility of reply, and an indication as to when the correspondent can expect an appropriate reply.

3. Care must be exercised to respond to all pertinent points of inquiries in a written communication.

4. Where a communication is forwarded to another State agency for reply, the correspondent will be so advised with a copy of the letter of transmittal including a reason for forwarding it to another agency for response.

5. All records will be retained in accordance with records retention schedules.

III. PERSONAL VISITS

1. Each agency/office shall have a directory or suitable signs at or immediately adjacent to office entrances, clearly showing where information or services may be secured. All such directories or signs shall be kept up-to-date by a specific person assigned this responsibility in each office. In multi-service buildings, this individual shall be responsible for assuring that appropriate direction signs, consistent with building regulations and policies, are posted and for keeping the directories and signs up-to-date.

2. Each agency/office shall designate one or more individuals to be in charge of providing information or handling complaints or requests from visitors during normal working hours which will be posted, with exceptions clearly indicated.

3. Each agency head will be responsible for implementing written procedures for handling inquiries, complaints and requests for service, including required time limits for response and appropriate follow-up procedures.

4. These procedures must include, at a minimum, the following provisions:

   a) referral to an appropriate person or office if immediate information cannot be provided;

   b) recording (logging) procedures if the inquiry cannot be resolved immediately;

   c) provisions to ensure that all pertinent information, such as proper names and locations of other offices, are provided.

5. A record should be maintained of deferred inquiries, complaints and requests which would be used to assure prompt follow-up in accordance with established time limits. Management shall periodically review such records to appraise the adequacy of response action.

STATE OF MARYLAND

DEPARTMENT OF GENERAL SERVICES

HALL OF RECORDS

P. O. BOX 828

ANNAPOLIS, MD. 21404

TELEPHONE: 269-3915

MAX MILLSTONE
SECRETARY

EDWARD C. PAPENFUSE
STATE ARCHIVIST AND
COMMISSIONER OF LAND PATENTS

GREGORY A. STIVERSON
ASSISTANT STATE ARCHIVIST

Statement of

Edward C. Papenfuse, State Archivist and Commissioner of Land Patents

Before the Governor's Information Practices Commission

March 16, 1981

Mr. Chairman, members of the Commission,

Even before the advent of the computer the information gathering practices of government were viewed with suspicion. In 1790 the idea of a census was an anathema to many who feared that invading the privacy of the new nation would result in higher taxes and perhaps even the end of the world. When the fascist regimes of the 1920s and 1930s proved how efficiently they could use personal data to crush the lives of their unwanted, every thinking person shuddered, powerful statements of protest such as 1984 and We were written, and in the end a global war was fought in defense of the right to be left alone. But should the potential abuse of information by the state become an excuse for severely restricting the period of time some categories of information gathered by government can be preserved?

If I have any major concern about the interim report of this Commission, it is that it conveys no recognition that the privacy issue with respect to almost any public record fades rapidly as generations pass. The descendants of those who opposed the 1790 census are this minute studying it closely for branches of their family tree. Cancer researchers at Hopkins Hospital and the University of Maryland have used late nineteenth- and early twentieth-century divorce proceedings in their quest for empirical data on cancer patients. Old personal and real property tax information is consulted daily to reconstruct the uses to

which the land has been put, and to establish the history of surviving buildings. From an alienation of affections suit has come photos of the interior of a Baltimore row house of the early twentieth century, visual details extremely hard, if not impossible, to find anywhere else. From an unrecorded equity case concerning the alleged misuses of church funds and building supplies we have a unique and remarkably detailed account of the construction of a late eighteenth century church. The criminal prosecution of a State Treasurer provides details on state finance of the late nineteenth century, including records of embezzled stock that may save the State considerable sums today.

My grandmother would put off any questions about my father's family with the retort: "What do you want to know that for? It is not worth knowing," which, of course, only served to peak my curiosity. Yet I respected her wishes, recognized that she had a right to her privacy, and waited until she had passed away before renewing my search for 'roots.' Even benign governments must be forced to respect the privacy of the governed, but not forever. We must, most definitely, respect the privacy of the living, but some of the massive computerized data bases of the present will be very helpful in the future to the study of our families and of our own time.

We cannot anticipate all the uses to which records can be put. Considered separately, at times they may appear academic. J. H. Latrobe, a prominent nineteenth-century Baltimore lawyer, discovered that among his papers he had depositions and other preliminary work done for a case that never (apparently) came to court, but which shed some interesting light on the history of the steamboat. The client had died and there were no longer any ethical reasons for

not telling the world that Nicholas Roosevelt had thought of the sidewheel steamboating long before Robert Fulton.

Just recently, we received an inquiry from a professor of history in Walla Walla Washington for information on the Washington State contingent of Coxey's Army, followers of a self-made Ohio business man, reformer, and victim of the depression of 1893. Jacob Coxey urged Congress to create jobs by spending large sums of newly issued paper money on good roads and other public improvements. His supporters marched on Washington in 1894 ad a 'living petition' of the unemployed to demonstrate their belief in Coxey's program. Their arrival was not appreciated and in large numbers they jailed as 'tramps' in the Maryland House of Corrections by a Prince George's County magistrate. At the House of Correctionn they were assigned prisoner numbers, described according to place of birth, age, complexion, hair and eye color, stature, place of residence, and occupation, nature of the crime, etc. Shortly thereafter they were pardoned on condition they would leave the state. Fortunately the Penitentiary and Magistrates' records were not considered so private and restricted that they were destroyed. In Maryland, at least, the rank and file of Coxey's Army can be saved from anonymity.

Collectively, even academic topics add up to a better understanding of ourselves and our past. My point with all these examples, however, is that the most private and personally sacred of records of today, records that for good reason were kept, but which no one would want the State or individuals to use to his or her own detriment during his or her lifetime, can easily be uniquely valuable historical evidence. As such it has a justifiable existence outside the period

of time it is necessary for the carefully delineated and monitored purposes of government.

In sum, I have no quarrel with restricted access to records that are sensitive as long as when they are no longer so, they can be saved. Monitor the current uses to which records are put. But leave the decision of the ultimate worth of public records, once agencies are done with them, to the scheduling process and the best judgment of archivists within the existing framework of Article 54 of the Annotated Code of Maryland. The Archives should be the collective memory and conscience of government, accessible to all the governed. It can only be so if it is left the legally mandated task of weeding out the permanent from the disposable, once the primary need for collecting the information in the first place is met. Obviously not everything can be saved. Indeed most archivists would be hard put to justify any more than five-six percent of the volume of data collected or created by government. What we throw away, however, ought not to be determined by a commendable desire to preserve the privacy of the living. Instead, any attempt to balance privacy with the public's right to know should provide for the preservation and accessibility of public records at a time when privacy is not relevant. We ought not to let the controls imposed on the present uses of personal information about the living gathered by government be the standard by which we close out forever any access to that information in the future.

Thank you.

A CRITIQUE OF THE MARYLAND PUBLIC INFORMATION ACT AND ITS ADMINISTRATION IN BALTIMORE CITY

TESTIMONY OF

LEE DAVID HOSHALL
BA, MS UNIVERSITY OF BALTIMORE

BEFORE THE

GOVERNOR'S INFORMATION PRACTICES COMMISSION

MONDAY, MARCH 16, 1981

O'CONNOR BUILDING
STATE OFFICE COMPLEX
201 WEST PRESTON ST.
BALTIMORE, MD. 21202

I. INTRODUCTION

I would like to take this opportunity to report on the Administration of the Maryland Public Information Act (MPIA) in Baltimore City, and to make several proposals for legislative revision. My comments are based upon experiences and observations both inside and outside of Baltimore City Government. From 1977 through 1980 I was a member of the Baltimore Community Relations Commission (BCRC) staff, having primary responsibility in the area of police-community relations, and serving as the Commission's representative to the Baltimore Complaint Evaluation Board (CEB), our city's police review board. From 1978 through 1980 I attended the Graduate School of Criminal Justice at the University of Baltimore, where I recently completed the Master of Science degree requirements, with a concentration in Theory and Research. Currently, I am coordinating a study of crime in public housing projects for the Department of Housing and Urban Development.

My interest in and experiences with the MPIA revolve around its use as a tool for social science research. In 1979 I proposed a study of the police use of excessive force and administrative complaint processing, in Baltimore City. Data for the analysis were to be drawn from BCRC staff reports on police investigations of alleged brutality, prepared for monthly CEB meetings. The analysis was to focus on the relationships between a wide range of key variables abstracted from the records. It would have been unprecedented in Baltimore, and more comprehensive than similar studies conducted in other cities. The completed project would have served an important public interest, contributing to public debate on an issue of great concern to the community, but which has received almost no systematic analysis locally. Unfortunately, it was disapproved by the BCRC during a closed meeting in February, 1980.

Since leaving the BCRC in March, 1980, I have continued my efforts to conduct the study. On March 19 I requested the CRC/CEB records, and on August 2, the original police investigations, detailing 386 closed cases of alleged brutality, from the respective agencies. The requests were made under the provisions of the MPIA. The letters explained the discretionar provisions of Section 3 (b), "records of investigations", and detailed the conditions under which disclosure of "reasonably severable" portions is authorized. Specifically, it was suggested that names, other identifiers, and other exempt information be deleted from the record. In addition, the letter cited the 1979 Opinion of the Attorney General regarding disclosure of such records.

Nearly one year has passed since the initial requests for records. The information remains in the files of city government, hidden behind a curtain of secrecy. No research has been conducted. The public's right to know, and to hold its government accountable, remain elusive dreams. Both agencies, through their legal representatives in the City Solicitor's Office, are denying the request or frustrating disclosure. We now turn to a detailed account of the problems in gaining access, as illustrated by this case.

II. ROADBLOCKS TO ACCESS UNDER THE MPIA

1. Administrative Delay as a Method of Discouragement

The first response of government agencies to MPIA requests is likely to be no response at all. Due to the ambiguous wording of Section 3 (d), which requires custodians to furnish statements of denial to applicants "..... within ten working days of denial", agencies have unlimited time to respond. The decision to deny is internal, and therefore, its timing is known only to the custodian. The potential for unreasonable and excessive delays is certainly real. In my case, the City Solicitor took 7 months to respond to the initial request for CRC/CEB records, and over 5 months after receiving the more detailed request. And this occurred only after an unusual degree of persistance on my part-regular telephone calls and followup letters. Otherwise, I doubt seriously that the City Solicitor would have responded at all. And one cannot help but wonder, how many other requests have been swept under the rug of city government.

2. Excessive and Indirect Costs as Methods of Frustrating Disclosure When Exempt Information Must Be Segregated From Non-Exempt Information

Another possible agency response, when portions of the requested records are exempt, is to charge large sums of money to cover administrative costs. While Section 4 (a) requires "reasonable fees" for copies, the lack of specificity allows for agencies to include any and all overhead costs, at least until the courts rule otherwise. This is exactly what the Police Department is doing, after acknowledging from the outset that the investigatory records are public, and portions disclosable. The department is requiring me to pay the salaries of personnel to review the records and delete names and other exempt information. Figuring approximately 20 minutes per page, at the Sergeant overtime rate of $12.99 per hour, plus copying charges, it is estimating a minimum of $1,787.67 for the disclosure of 600

pages. Upwards of 80% of the proposed charges is for preparitory work-screening for and deleting certain information, proofreading, daily log-keeping, etc. A $1,000 deposit is required.

I question both the accuracy of this estimate and the legal basis upon which it rests. For most citizens, including myself, these charges are prohibitive. Moreover, this method would seem to violate the spirit of the MPIA, and most definately conflicts with the practices of federal agencies responding to FOIA requests. It also disavows any responsibility on the part of the agency to actively uphold the public's right to be informed. Furthermore, we find that this policy is not uniformly applied. For example, the department's Research and Plannmng Division routinely furnishes computer-generated, specialized analyses of civilian crime data in response to requests from private individuals and groups. Obviously, the indirect costs of such production are substantial. Yet they are absorbed by the department's operating budget, not passed onto requestors. On November 10 I requested a waiver of fees, citing the above considerations and elaborating on the public interest at stake. The request was denied.

The social consequences of this double standard in information disclosure are serious; the department exercises, in effect, sole authority over what the public should or should not know about police activities.

3. Use of the "Red Herring" Tactic: Misconstruing Other Statutes as Exceptions to Disclosure in Order To Bar Access

A final tactic employed by the City Solicitor to block access is the all-too-familiar "end run" around the MPIA, when other statutes purportedly barring disclosure are cited. This may be the most reprehensible of all. In this case, the City Solicitor, in order to justify the continued secrecy of CRC/CEB records, has issued no less than three different opinions. The first on October 14, the second on December 9, and the third, on December 12.

His position rests on the applicablity of two separate statutes which supposedly confer "privileged or confidential" status upon the records, there by qualifying as exceptions. One, Section 16-48 of the Code of Public Local Laws, prohibits the disclosure of CEB "...records containing the names or identification of police personnel, complainants, investigators, or witnesses' Like the MPIA, this statute is primarily concerned with the protection of individual privacy. Since the request was for records with personal identifier deleted, such disclosure is fully authorized. In his third opinion, the City Solicitor opts instead for the Baltimore City Code. Article 4, Section 18 (e is the BCRC mandate. This provision shields by a cloak of confidentiality the investigatory stages of the Commision's

inquiries into unlawful discriminatory practices. It does not apply to this request. The records at issue, held by the BCRC in connection with its review of police investigations of alleged brutality, as a member of the CEB, are conspiciously absent from the statute's enumerated sections. Indeed, the CEB records could not possibly have been on the minds of the City Council when Article 4 was enacted in 1966, since the CEB was not established by the State Legislative until 1975, nine years later!

Furthermore, the records differ markedly in both content and purpose. The BCRC investigations typically involve charges of discrimination lodged by private parties against private employers; settlement is generally reached through conference, conciliation, and persuasion. Building such trust necessarily requires a climate of secrecy. In sharp contrast, police investigations involve charges of misconduct lodged by private parties against government officials; given the nature of such charges, the public position of those accused, and the public, quasi-judicial hearings for which the records are expected to be used, one finds it hard to believe that the totality of information contained in the records (aside from personal identifiers) qualifies for absolute secrecy. Indeed, the fact that the original investigations are, according to the police themselves, public information, would seem to negate such an assertion. I have gone to great lengths to clarify matters for the City Solicitor, to no avail. He continues to cling to this preposterous notion in order to justify secrecy.

4. The MPIA's Failure to Distinguish Between Research and Non-Research Purposes Permits An Irrational and Unwarranted Restriction on Social Science Inquiry

The MPIA attempts to arrive at a reasonable balance between an individual's right to privacy and the public's right to be informed. In doing so, it applies the privacy safeguards across-the-board. Yet social science reseach, when properly conducted, poses no threat to privacy. The discipline includes built-in, institutionalized protections, from the Professional Codes of Ethics to accepted research methodologies to the practice of reporting findings in statistical or anonomous forms. Accordingly, the witholding of any records - no matter what their classification - from reseachers, is both irrational and unwarranted. This also prevents social scientists from carrying out their responsibility to objectively inform the public. Recognizing these discrepancies, the National Advisory Commission on Criminal Justice Standards and Goals (1977) concluded:

This report believes that the potential for future unintended deleterious restrictions on researchers in connection with the Privacy Act, the Freedom of Information Act, proposed legislation concerning privacy of data, and related state legislation, arises from the fact that research has been only a peripheral concern of those who draft such legislation and related regulations. Explicit attention to the needs of research in the future may obviate these problems.

III. PROPOSALS FOR LEGISLATIVE REVISION AND ADMINISTRATIVE COMPLIANCE

Based on the aforegoing, and in the interests of achieving the reasonable balance between an individual's right of privacy and the public's right to be informed, in practice as well as in policy, I urge the Governor's Commission to adopt the following proposals and actively work for their implementation.

Proposal #1

Amend Section 3 (d) of the MPIA so as to require agencies to respond in writing to information requests within 10 days of the receipt of the request. It is noteworthy that FOIA limits response time to 10 days, while the National Conference of Commissioners on Uniform State Laws (NCCUSL) recommends 7 days (Section 2-102-d).

Proposal #2

Amend Section 4 (a) so as to provide parameters for the setting of reasonable fees for copies of records. In particular, Section 2-102 (e) of the NCCUSL draft should be adopted:

> Unless otherwise provided by law, whenever an agency provides a copy of a government record to a person, it may charge the currently prevailing commercial rate for copying. An agency may not charge for the services of government personnel in searching for a record, reviewing its contents, and segregating disclosable from non-disclosable information or for the expenses incurred in establishing or maintaining the record. The agency shall establish a schedule of its charges and make it available to the public.

Proposal #3

Amend Section 3 so as to provide a conditional, across-the-board exemption for qualified persons requesting information for research purposes. In implementing this change, the Governor's Commission should consider the precedent of the Federal Privacy Act of 1974 (Section b5, "Conditions for Disclosure"), as well as the NCCUSL draft. Of the two, the NCCUSL is preferable because it is more restrictive and provides greater protection against abuse. It reads as follows:

Section 1-105 General Definitions
(9) "Research purpose" means an objective to develop, study, or report aggregate or an onymous information not intended to be used in any way in which the identity of individuals is material to the results.

Section 3-109 Disclosure of Individually Identifiable Record for Research Purposes; Limitations on Redisclosure
(a) An agency may disclose or authorize the disclosure of any individually identifiable record for research purposes only if the agency: (1) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information in individually identifiable form and the additional risk to individual privacy as a result of the disclosure will be minimal;

(2) receives adequate assurances that the recipient will establish the safeguards required by Section 3-108 (a) (b) (integrity, confidentiality, and security of records) and will remove or destroy the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(3) secures from the recipient of the records a written statement of his understanding of and agreements to the conditions of this subsection; and

(4) prohibits any subsequent use or disclosure of the record in individually identifiable form without the express authorization of the agency or the individual to whom the record pertains.

Proposal #4

Request an Opinion from the Attorney General relative to the public disclosure of the aforementioned records, under the MPIA. Inasmuch as the Baltimore City Solicitor's Office has shirked its responsibility to provide sensible legal advice, it seems both appropriate and necessary to seek advice from a higher authority.

Proposal #5

Establish a Government Information Practices Commission authorized by law to receive and resolve complaints relative to MPIA matters. Given the propensity of government agencies for secrecy, the scarcity of caselaw under the MPIA, and the difficulties in bringing legal action against the government, an independant review board is warranted.

Statement of Norman Karsh
Assistant State Superintendent
Maryland State Department of Education

before the

GOVERNOR'S INFORMATION PRACTICES COMMISSION

March 16, 1981

Mr. Chairman and Members of the Commission:

It is a pleasure to appear before this Commission and to provide you with the Department of Education's view on this subject. As you may already know, we have been in touch with your Executive Director, Mr. Dennis Hanratty. He has met with several members of our Department, and we have provided him with the information that you are seeking.

The Department of Education is very concerned with the subject of privacy of personal information. As is obvious, our "clientele" are the elementary and secondary school children throughout the State, as well as those adults requiring vocational rehabilitation services. At any given time, there are over one and one-half million individuals encompassed under the Department's sphere of responsibility.

We are aware of the fact that the nature of our activity requires a conscious effort to protect personal information applicable to everyone of those who obtain the services of this Department. We recognize that there are distinctions between the many categories of individuals in the public school system and the vocational rehabilitation network, and we have designed security measures appropriate to each.

During his visit to the Department, Mr. Hanratty spoke to staff members responsible for six separate record keeping areas. They are:

1. Student Records
2. Special Education Records
3. Teacher Certification Records
4. General Educational Development
5. Vocational/Technical Education
6. Vocational Rehabilitation
7. Maryland State Department of Education Personnel Records.

For each one of these subject areas, he has been provided documentation pertaining to their maintenance and security aspects.

One prevailing principle which pertains to all of these records is the absolute necessity to insure their privacy. Not only is this in accordance with statutes and regulations requiring us to do so, but we also believe it is our obligation to the individuals concerned. The manner by which we do this may vary among the various files, but the principle remains the same.

In our concern for personal privacy, we are not overlooking our obligation to the general public. They have both a need and a right to know the manner by which public programs are administered. Periodically, we issue a series of statistical and informational reports which provide meaningful information to those who are concerned with our programs. We attempt to be responsive to individual requests for information

and have established a department-wide policy and procedure designed to give a prompt and courteous response to all who may seek it. In this connection, a copy of our Citizen Response Plan has also been furnished to Mr. Hanratty.

I believe we have made every effort to insure compliance with the principles enumerated in your interim report of January 1981, which we also endorse.

Should you desire any additional information, I will be glad to answer any questions you may have. Thank you.

THE MOTOR VEHICLE ADMINISTRATION'S

TESTIMONY

BEFORE THE

GOVERNOR'S INFORMATION PRACTICES COMMISSION

William Long
Administrative Officer III
Systems Planning and Implementation

Motor Vehicle Administration
6601 Ritchie Highway, N.E.,
Glen Burnie, Maryland 21061

768-7203

The Motor Vehicle Administration has many types of records which are sold to members of the public or industries upon request. These include but are not limited to driving records, vehicle registration records, title records, insurance records, Medical Advisory Board records, etc.

The Administration is required by law to make this information available pursuant to sections of the Transportation Article. Copies of these sections of law are attached for your review.

We have established procedures to guide the appropriate MVA personnel in dissemination.

Some vehicle registration records, title records, insurance records, Medical Advisory Board records are not computerized. These records are maintained in their original form, on micro-film or photocopy and certified via cover sheet, attesting authenticity. Copies of these records are sold to the general public at $1.00 per record as required by Section 12-113 Transportation Article. There is currently a bill before the Gerneral Assembly HB #1839, which increases these fees.

The Administration also makes computerized information available on printouts, computer tape and mailing labels. Prior to selling computerized information the Administration enters into a written contract with the purchaser which specifies certain duties and responsibilities. These purchasers are charged the actual costs of production, including programming, computer run time and output prior to release of information. A copy of the standard agreement is attached.

Driving Records can be obtained by individuals or insurance

companies in printout format or on computer print tapes. Certain records of the Administration are considered confidential such as Doctor's reports of medical conditions of driver licensees. This information is not released to the general public or Insurance Company representatives pursuant to Section 12-111 Transportation Article.

Copies of written procedures for obtaining and processing records are available for your review upon request. Examples of information released is also available.

§ 12-111. Records of Administration — In general.

(a) *Records required to be kept.* — The Administration shall keep a record of each application or other document filed with it and each certificate or other official document that it issues.

(b) *Records are public information.* — (1) Except as otherwise provided by law, all records of the Administration are public records and open to public inspection during office hours.

(2) In his discretion, the Administrator may classify as confidential and not open to public inspection any record or record entry:

(i) That is over 5 years old; or

(ii) That relates to any happening that occurred over 5 years earlier.

(3) Any record or record entry of any age shall be open to inspection by authorized representatives of any federal, State, or local governmental agency.

(c) *Records in microform.* — Except for records required by law to be kept in their original or other specified form, the Administrator may order any record of the Administration to be kept on microfilm or in other microform, and the original destroyed.

(d) *Destruction of old records.* — Except for records required by law to be kept longer, the Administrator may destroy any record of the Administration that it has kept for 3 years or more and that the Administrator considers obsolete and unnecessary to the work of the Administration. (An. Code 1957, art. 66½, § 2-312; 1977, ch. 14, § 2.)

REVISOR'S NOTE

This section is new language derived without substantive change from former Article 66½, § 2-312.

As to public inspection of records generally, see Article 76A of the Code.

Definitional cross references:

"Administration":	§ 11-102
"Administrator":	§ 11-103

§ 12-112. Same — Listings of information.

(a) *Furnishing of listings.* — Unless the information is classified as confidential under § 12-111 of this subtitle or otherwise as provided by law, the Administration may furnish listings of vehicle registration and other public information in its records to those persons who request them, but only if the Administration approves of the purpose for which the information is requested.

(b) *Fee.* — The Administration shall charge a fee for any listing furnished under this section. The fee charged may not be less than the cost of this State of preparing that listing.

(c) *Prohibited uses.* — A person furnished any information under this section is prohibited from distributing or otherwise using the information for any purpose other than that for which it was requested and furnished. (An. Code 1957, art. 66½, § 3-418; 1977, ch. 14, § 2.)

REVISOR'S NOTE

This section is new language derived from former Article 66½, § 3-418.

In light of Article 76A of the Code and current practice, the section is revised to relate to information listings, generally, and not only — as in former § 3-418 — "vehicle registration information".

In subsection (c) of this section, the phrase "or otherwise using" is added for clarity.

The only other changes are in style.

Definitional cross references:

"Administration":	§ 11-102
"Vehicle":	§ 11-176

§ 12-113. Same — Certified copies; use in judicial proceedings.

(a) *Certification of records.* — (1) The Administrator or any other officer or employee of the Administration designated by the Administrator may prepare and deliver on request a certified copy of any record of the Administration.

(2) The Administration may charge a fee of $1 for each document it certifies.

(b) *Admissibility of certified copy in judicial proceedings; compliance with subpoena.* — (1) A certified copy of any record of the Administration or comparable agency of any state is admissible in any judicial proceeding in the same manner as the original of the record.

(2) If a subpoena is issued to the Administrator or any other official or employee of the Administration for the production in any judicial proceeding of the original or a copy of any book, paper, entry, record, proceeding, or other document of the Administration:

(i) The Administrator or other official or employee of the Administration need not appear personally; and

(ii) Submission of a certified copy or photostat of the requested document is full compliance with the subpoena.

(3) On motion and for good cause shown, the court may compel the attendance of an authorized representative of the Administration to answer the subpoena for the production of documents. (An. Code 1957, art. 66½, § 2-311.1; 1977, ch. 14, § 2; ch. 307.)

REVISOR'S NOTE

This section formerly appeared as Article 66½, § 2-311.1.

In subsection (a) (1) of this section, the reference to the preparation of the copy "under the seal" of the Administration is deleted as unnecessary.

The only other changes are in style.

Definitional cross references:

"Administration":	§ 11-102
"Administrator":	§ 11-103

Field agent who delivers subpoenaed records was an "official of the Administration" under subsection (b) of this section to whom the subpoena duces tecum was issued. He did not therefore have to establish his own familiarity with the registration records or a chain of custody since there is no requirement that the subpoenaed official or employee appear personally. A copy or photostat duly certified is "full compliance." McCargo v. State, 26 Md. App. 290, 338 A.2d 76 (1975).

REVISOR'S NOTE

This section formerly appeared as Article 66½, § 6-116.

The only changes are in style.

Definitional cross references:

"Administration": § 11-102
"Driver's license": § 11-116
"Name": § 11-137

§ 16-117. Records to be kept by Administration.

(a) *Record of applicants and licensees.* — The Administration shall keep a record of:

(1) Each driver's license application that it receives;

(2) Each driver's license that it issues; and

(3) Each licensee whose license to drive the Administration has suspended or revoked, and the reasons for the action.

(b) *Accident reports and court conviction records.* — (1) The Administration shall file each accident report and abstract of court conviction records that it receives under the laws of this State.

(2) The Administration shall keep convenient records or make suitable notations showing the convictions or traffic accidents in which each licensee has been involved. These records or notations shall be made so that they are readily available for consideration by the Administration of any license renewal application and at any other suitable time.

(3) Accident reports and abstracts of court convictions pertaining to driving an emergency vehicle, if received by a person who was driving an emergency vehicle pursuant to the provisions of § 21-106 of this article, shall be segregated by the Administration and shall be available only to the Administration.

(c) *No record to be kept of dismissed charges.* — If a charge of a Maryland Vehicle Law violation against any individual is dismissed by a court of competent jurisdiction, a record of the charge and dismissal may not be included in his driving record. (An. Code 1957, art. 66½, §§ 6-111, 6-117; 1977, ch. 14, § 2; 1980, ch. 682.)

REVISOR'S NOTE

This section is new language derived without substantive change from the second clause of former Article 66½, § 6-111 (b) and from former Article 66½, § 6-117 (a), (b), and (d).

In subsection (c) of this section, the short title "Maryland Vehicle Law" is substituted for the former reference to "this article"; see § 11-206 of this article.

Former Article 66½, § 6-117 (c) permits the Administration to destroy the records of expired licenses "six months after . . . renewals . . . become effective." Both the Commission and the Administration found this provision to be unintelligible. Since the purpose of this provision is unknown and, in any event, the provision is unused, it is deleted.

As to public inspection of records, see § 12-111 of this article.

Definitional cross references:

"Administration": § 11-102
"Conviction": § 11-110
"Driver's license": § 11-116
"License (to drive)": § 11-128
"Revoke (license to drive)": § 11-150
"Suspend (license to drive)": § 11-164
"Traffic": § 11-166

Effect of amendment. — The 1980 amendment, effective July 1, 1980, added paragraph (3) in subsection (b).

§ 16-117.1. Expungement of certain driving records.

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) "Criminal offense" does not include any violation of the Maryland Vehicle Law.

(3) "Moving violation" means a moving violation of the Maryland Vehicle Law other than a violation of any of its size, weight, load, equipment, or inspection provisions.

(b) *When Administration may expunge records.* — Except as provided in subsection (c) of this section, if a licensee applies for the expungement of his public driving record, the Administration shall expunge the record if, at the time of application:

(1) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 3 years, and his license never has been suspended or revoked;

(2) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 5 years, and his record shows not more than one suspension and no revocations; or

(3) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 10 years, regardless of the number of suspensions or revocations.

(c) *When Administration may refuse to expunge.* — The Administration may refuse to expunge a driving record if it determines that the individual requesting the expungement has not driven a motor vehicle on the highways during the particular conviction-free period on which he bases his request. (An. Code 1957, art. 66½, § 6-117; 1977, ch. 14, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 66½, § 6-117 (e).

Subsection (a) of this section is revised to clarify the intended distinction between the terms there defined.

Subsection (b) of this section is revised to avoid the former, unintended — as seen from subsection (c) of this section — implication that the expungement is discretionary with the Administration.

The only other changes are in style.

Definitional cross references:

"Administration":	§ 11-102
"Conviction":	§ 11-110
"Highway":	§ 11-127
"License (to drive)":	§ 11-128
"Motor vehicle":	§ 11-135
"Revoke (license to drive)":	§ 11-150
"Suspend (license to drive)":	§ 11-164

Effect of amendment. — The 1980 amendment, effective July 1, 1980, added paragraph (3) in subsection (b).

§ 16-117.1. Expungement of certain driving records.

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(2) "Criminal offense" does not include any violation of the Maryland Vehicle Law.

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(2) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 5 years, and his record shows not more than one suspension and no revocations; or

(3) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 10 years, regardless of the number of suspensions or revocations.

(c) *When Administration may refuse to expunge.* — The Administration may refuse to expunge a driving record if it determines that the individual requesting the expungement has not driven a motor vehicle on the highways during the particular conviction-free period on which he bases his request. (An. Code 1957, art. 66½, § 6-117; 1977, ch. 14, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 66½, § 6-117 (e).

Subsection (a) of this section is revised to clarify the intended distinction between the terms there defined.

Subsection (b) of this section is revised to avoid the former, unintended — as seen from subsection (c) of this section — implication that the expungement is discretionary with the Administration.

The only other changes are in style.

Definitional cross references:

"Administration":	§ 11-102
"Conviction":	§ 11-110
"Highway":	§ 11-127
"License (to drive)":	§ 11-128
"Motor vehicle":	§ 11-135
"Revoke (license to drive)":	§ 11-150
"Suspend (license to drive)":	§ 11-164

§ 16-118. Medical Advisory Board.

(a) *Administrator may appoint Board and secretary.* — (1) The Administrator may appoint a Medical Advisory Board of qualified physicians and optometrists to enable the Administration to comply properly with the provisions of this title regarding the physical and mental condition of individuals who seek to drive on highways in this State.

(2) The Administrator also may appoint a medical secretary to serve the Board.

(b) *Compensation.* — Each member of the Medical Advisory Board is entitled to compensation for each meeting that the member attends. The compensation shall be paid out of funds appropriated to the Administration.

(c) *Duties.* — (1) The Administrator may refer to the Medical Advisory Board, for an advisory opinion, the case of any individual who applies for a license or whose license has been suspended or revoked, if the Administrator has good cause to believe that the driving of a vehicle by him would be inimical to public safety and welfare because of an existing or suspected mental or physical disability.

(2) The Board shall meet at the pleasure of the Administrator.

(d) *Records confidential.* — (1) The records of the Medical Advisory Board:

(i) Are confidential;

(ii) May be disclosed only on court order; and

(iii) May be used only to determine the qualifications of an individual to drive.

(2) A person may not use these records for any other purpose. (An. Code 1957, art. 66½, § 2-305; 1977, ch. 14, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 66½, § 2-305.

Subsections (d) (1) (iii) and (d) (2) of this section are new language added for clarity and to conform to the similar provisions appearing in §§ 16-119 (d) and 16-120 (c) of this subtitle. The only other changes are in style.

Definitional cross references:

"Administration": § 11-102
"Administrator": § 11-103
"Drive": § 11-114
"Highway": § 11-127
"License (to drive)": § 11-128
"Revoke (license to drive)": § 11-150
"Suspend (license to drive)": § 11-164
"Vehicle": § 11-176

§ 16-119. Reports of certain disorders by physicians and specialists.

(a) *Certain disorders to be defined.* — The department of Health and Mental Hygiene, together with the Medical and Chirurgical Faculty and the Board of Examiners of Optometry, shall define:

(1) Disorders characterized by lapses of consciousness; and

(2) Disorders that result in a corrected visual acuity that fails to comply with the vision requirements of this subtitle.

(b) *Reports to be made to Administration and to subject of report.* — (1) Except as provided in paragraph (2) of this subsection, any physician and any other person authorized to diagnose, detect, or treat disorders defined under subsection (a) of this section may report to the Medical Advisory Board and to the subject of the report, in writing, the full name, date of birth, and address of each individual 15 years old or older who has any such disorder.

(2) Unless authorized by the individual in writing, a report may not be made from information derived from the diagnosis or treatment of any individual on whom a confidential or privileged relationship is conferred by law.

(c) *Persons to be examined.* — On receipt of a report under this section, the Administration shall:

(1) As soon as practicable, arrange for an examination of each reported individual who holds a driver's license; and

(2) If the individual fails to meet the requirements of this subtitle, cancel his license.

(d) *Reports confidential.* — (1) The reports made to the Administration under this section:

(i) Are confidential;

(ii) May be disclosed only on court order; and

(iii) May be used only to determine the qualifications of an individual to drive.

(2) A person may not use these reports for any other purpose.

(e) *No civil or criminal action against informant who does not violate privilege.* — A civil or criminal action may not be brought against any person who makes a report under this section and who does not violate any confidential or privileged relationship conferred by law.

(f) *Use of report as evidence.* — A report made under this section may not be used as evidence in any civil or criminal trial, except in a legal action involving an alleged violation of a confidential or privileged relationship conferred by law. (An. Code 1957, art. 66½, § 6-110.3; 1977, ch. 14, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 66½, § 6-110.3.

In subsections (d) and (e) of this section, the former references to "required" reports are deleted as nonsequential since, under subsection (a) of this section, the reports are permitted but not required.

Subsections (d) (1) (ii) and (d) (2) of this section are new language added for clarity and to conform to the similar provisions appearing in §§ 16-118 (d) and 16-120 (c) of this subtitle.

In subsection (e) of this section, the former reference to an "agency" is deleted as unnecessary in light of the broad definition of "person" in § 1-101 of this article.

The only other changes are in style.

Note that, although subsection (c) (2) of this section requires the Administration to "cancel" the license of a person who fails to meet the requirements of this subtitle, § 16-208 (a) of this title authorizes the Administration to "suspend" the license of any person "who cannot drive safely because of his physical or mental condition."

Definitional cross references:

"Administration":	§ 11-102
"Cancel (driver's license)":	§ 11-107
"Drive":	§ 11-114

MVA

Dick
3-7-81

HOUSE OF DELEGATES

11r4004 No. 1889 27

By: Law Enforcement Transportation Subcommittee and Delegates Amoss, Blumenthal, Douglass, Maloney, Medairy, Morella, Muldowney, and Robey
Introduced and read first time: February 27, 1981
Assigned to: Constitutional and Administrative Law

A BILL ENTITLED

AN ACT concerning

Motor Vehicle Administration - Fees
For Duplicate Documents

FOR the purpose of altering the applicable fees for issuance by the Motor Vehicle Administration of a certified copy of any record of the Administration, a duplicate of a certain security interest filing, a duplicate salvage certificate, a duplicate certificate of title, a duplicate registration card, replacement validation tabs, and a duplicate of a certain license; prohibiting the Administration from charging a fee for the certification of certain documents it issues to any police agency or court; and prescribing the procedures a person must follow to be issued a duplicate of a certain security interest filing.

BY repealing and reenacting, with amendments,

Article - Transportation
Section 12-113(a), 13-506(a), 13-805, 13-950, 13-951, and 15-107
Annotated Code of Maryland
(1977 Volume and 1980 Supplement)

BY adding to

Article - Transportation
Section 13-202(d) and 13-953
Annotated Code of Maryland
(1977 Volume and 1980 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.

Article - Transportation

12-113.

(a) (1) The Administrator or any other officer or employee of the Administration designated by the Administrator may prepare and deliver on request a certified copy of any record of the Administration.

(2) The Administration may charge a fee of [$1] $2 for each document it certifies.

(3) NO CHARGE SHALL BE MADE TO A POLICE AGENCY OR COURT IN THIS OR ANY OTHER STATE OR A POLICE AGENCY OR COURT OF THE UNITED STATES GOVERNMENT.

13-202.

(D) A SECURED PARTY UNDER THIS SUBTITLE MAY OBTAIN FROM THE ADMINISTRATION A DUPLICATE OF THE SECURITY INTEREST FILING AS PROVIDED IN § 13-953 OF THIS TITLE.

13-506.

(a) (1) Notwithstanding any other provision to the contrary, if, as a result of a total loss insurance settlement, a vehicle is transferred as salvage, the insurance company, its authorized agent, or the vehicle owner shall send the certificate of title of the vehicle to the Administration within 10 days from the date of the settlement.

(2) On payment of a fee of $2, the Administration shall issue a salvage certificate in the name of the insurance company or vehicle owner. On receipt of the salvage certificate, the insurance company or vehicle owner promptly shall endorse an assignment of ownership and give the certificate to the person who acquired the vehicle as salvage. The fee for issuance of a duplicate salvage certificate is [$1] $2.

(3) The records of the Administration shall be marked to indicate:

(i) That the vehicle was transferred as salvage; and

(ii) That the vehicle may not be titled or registered for operation in this State except in accordance with subsection (b) of this section.

13-805.

For the issuance of a duplicate certificate of title, issued under § 13-111 of this title to replace a lost, stolen, or damaged certificate of title, the fee is [$1] $2.

13-950.

(a) (1) On application, the Administration may issue an additional registration card for a registered vehicle.

(2) For the issuance of an additional registration card under this subsection, the fee is [$1] $2.

(b) For the issuance of a duplicate registration card, issued under § 13-415 (a) of this title to replace a lost, stolen, or damaged registration card, the fee is [$1] $2.

13-951.

For the issuance of replacement validation tabs, issued under § 13-415 (a) of this title to replace lost, stolen, or damaged validation tabs that have never been affixed to registration plates, the fee is [$1] $2.

13-953.

(A) ANY PERSON WITH A PERFECTED SECURITY INTEREST IN A VEHICLE MAY APPLY TO THE ADMINISTRATION FOR A DUPLICATE OF THE SECURITY INTEREST FILING.

(B) IF A PERSON WHO APPLIES TO THE ADMINISTRATION FOR A DUPLICATE OF THE SECURITY INTEREST FILING UNDER THIS SECTION FURNISHES INFORMATION SATISFACTORY TO THE ADMINISTRATION AND PAYS THE REQUIRED FEE, THE ADMINISTRATION SHALL ISSUE TO THE PERSON A DUPLICATE OF THE SECURITY INTEREST FILING.

(C) FOR THE ISSUANCE OF A DUPLICATE OF A SECURITY INTERST FILING UNDER THIS SECTION, THE FEE IS $2.

15-107.

If a license issued under this title is lost, stolen, mutilated, destroyed, or becomes illegible, the Administration may issue a duplicate license on application and payment of a fee of [$1] $2. Before the Administration issues a duplicate, it may require the licensee to furnish satisfactory proof of the loss, theft, mutilation, destruction, or illegibility. When the Administration issues the duplicate, the license previously issued is void.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1981.

AGREEMENT

FOR PURCHASE OF INFORMATION IN
THE MOTOR VEHICLE ADMINISTRATION RECORDS

This agreement made and entered into this _____ day of _____, 19__, by and between _____ (hereinafter called "_____"), with principal offices in the City of _____, State of _____, and the State of Maryland (hereinafter called "State"), acting by and through the Administrator of the Motor Vehicle Administration (hereinafter called "Administrator"):

Now, therefore, it is agreed as follows:

FIRST, The State agrees to furnish _____ the following information from the records of the Motor Vehicle Administration:

SECOND, _____ will pay the State for this information at the prevailing rate established by the Administrator. Such sum is to be paid upon presentation of the invoice and prior to delivery of the information.

THIRD, _____ agrees that:

(1) It will use the information for the following purposes:

(2) _____ agrees that it will not resell, furnish or otherwise make available any information supplied pursuant to this agreement to other persons for use in direct mail advertising or other types of mailings. In all instances where such information is used for mailing purposes, _____ will make such mailings from its facilities located in _____, _____. In addition, _____ will not use such information in mailings promoting the sale of real estate or insurance or in mailings which involve sweepstakes or give-away programs. No mailings will be made

PE OF RECORD DESIRED:
ITLE FILE
EGISTRATION FILE
EALER FILE

MARYLAND MOTOR VEHICLE ADMINISTRATION
VEHICLE REGISTRATION DIVISION

REQUEST TO VIEW OR OBTAIN A COPY OF A RECORD

REQUEST NO.

DATE OF REQUEST

I WANT TO VIEW THE RECORD (NO CHARGE)

CK C

☐ I WANT A CERTIFICATION OF THE RECORD (FEE $1.00)

☐ I WANT A CERTIFIED COPY OF THE RECORD (FEE $1.00)

☐ I WANT A GRATIS CERTIFICATION OF THE RECORD

☐ I WANT A GRATIS CERTIFIED COPY OF THE RECORD

GRATIS CERTIFIED COPIES AND GRATIS CERTIFICATIONS ARE ISSUED ONLY TO LAW ENFORCEMENT OFFICERS FOR OFFICIAL USE.

(S) ON RECORD REQUESTED:

RESS IN FULL:

E NO.	TAG NO.	SERIAL NO.	DEALER NO.	SALESMAN NO.

E OF PERSON REQUESTING RECORD:

BADGE OR I.D. NO.

NCY OR BUSINESS REPRESENTED:

ATURE OF PERSON MAKING REQUEST:

FOR M.V.A. USE ONLY

APPROVED FOR COPYING

COPIED BY

DATE

START NO.

STOP NO.

VR-239 (1-77)

DRIVER RECORDS DIVISION
MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY N.E.
GLEN BURNIE, MARYLAND 21062

APPLICATION FOR CERTIFIED COPY OF RECORD – FEE $1.00

TYPE OF RECORD REQUESTED
☐ Driving Record ☐ Gratis for Law Enforcement only
☐ License Application ☐ Other _____

DRIVER LICENSE NUMBER | LAST NAME | FIRST NAME | FULL MIDDLE NAME

ADDRESS IN FULL | CITY | STATE | ZIP CODE | DRIVER'S BIRTH DATE

AGENCY | SIGNATURE OF REQUESTER | NAME OF REQUESTER (PRINT)

COMPLETE THIS SECTION ONLY IF RECORD IS TO BE MAILED

NAME (PRINT) | ADDRESS OF REQUESTER

ADDRESS | CITY | STATE | ZIP CODE

CITY | STATE | ZIP CODE

GR CK C

DI-57A (12-80) | RECEIPT VALIDATION

PLEASE PRINT ALL INFORMATION

Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062

REQUEST TO VIEW A DRIVING RECORD
(NO CHARGE FOR THIS SERVICE)

Date _____
MO. DAY YR.

OF:

License No. _____

_____ LAST _____ FIRST _____ MIDDLE _____ DATE OF BIRTH

REQUESTED BY:

_____ ID. No. _____ Agency _____

ation Verified by: _____
CLERK

DI-58 (12-80)

Title 11
DEPARTMENT OF TRANSPORTATION

Subtitle 15 MOTOR VEHICLE ADMINISTRATION—VEHICLE REGISTRATION

Chapter 11 Registration Lists & Transfer

Authority: Transportation Article, §12-104(b), Annotated Code of Maryland

.01 Registration Lists.

A person may not publish, copy, duplicate, reproduce, or otherwise disseminate information from registration lists obtained under the provisions of the Transportation Article, §12-112, Annotated Code of Maryland, without the express permission of this Administration.

.02 Transfer of Registration Plates.

A. Registration plates acquired by any person, for any vehicle owned by that person, may be transferred to a newly acquired vehicle provided:

(1) The ownership of the newly acquired vehicle has not changed from the name in which the plates were originally issued;

(2) The vehicle classification of the newly acquired vehicle is identical to the classification of the vehicle to which the plates were originally issued;

(3) The vehicle from which the plates are to be transferred has been sold, traded, junked, or otherwise disposed of.

B. Substitute registration plates may be issued for plates on an unrecovered stolen vehicle, provided this Administration has a stolen record of the vehicle. The substitute plates may then be transferred to a newly acquired vehicle.

Administrative History

Effective date: February 15, 1973

11.17.03
Physical & Mental Condition

considered to be an alcoholic, he should abstain for at least 6 months and submit evidence that he is under a recognized recovery program approved by a medical authority before being considered for any class of license.

I. An individual who is a paraplegic, quadreplegic, or has the loss of one or more limbs may be required by the Medical Advisory Board to submit to driver's re-examination to determine applicant's ability to safely operate a motor vehicle.

.05 Procedures When Suspension or Refusal is Recommended.

If the Medical Advisory Board recommends suspension or refusal of a driving privilege, and the recommendation is followed by the Administration, a letter shall be sent by certified first class mail to the individual, stating:

A. When the suspension or refusal becomes effective; and

B. The reasons for the suspension or refusal, and when licensure will be reconsidered; and

C. That an administrative hearing may be requested in writing; and, except in emergency situations, if the individual has a valid license, the effective date of the suspension will be stayed until the administrative hearing is conducted; and that he may be represented by an attorney at the administrative hearing.

.06 Procedures When a Suspension or a Refusal is Continued.

The provisions set forth in Regulation .05, above, also apply when the Administration, based upon a recommendation of the Medical Advisory Board, continues a suspension or refusal.

.07 Procedures When a Hearing is Requested.

If an individual requests an administrative hearing after a negative decision of the Administration based upon a recommendation of the Medical Advisory Board, the Administration shall inform the individual by written notice, of his right to inspect and copy, at his own expense and during the hours designated by the Administration, all medical records and other documents considered by the Medical Advisory Board, except records and other documents designated confidential by their source, in which case:

A. If the individual is represented by counsel, his counsel shall have the right to inspect and copy, at his own expense and during the hours designated by the Administration, those medical records and

3177839

Maryland Department of Transportation

MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND, 21062

I, William T. S. Bricker, Administrator of Motor Vehicles for the State of Maryland, by virtue of the authority vested in me, under the Transportation Article, Motor Vehicle Law, do hereby certify that the following is a true copy, taken from the original, now on file, and part of the records, of this Administration:

03177839

SOUNDEX NUMBER	NAME AND ADDRESS
M 450-189-261-670 T	[redacted]
	1619 [redacted] RD APT E
	BALTIMORE BA MD21221

HEIGHT	WEIGHT	RACE	SEX	BIRTH DATE	RESTRICTIONS	PAGE
5-08	167	2	M	08-28-50		

TYPE OF LICENSE ISSUED	EXPIRATION DATE
CLASS DE	08-28-84

PAID

CURRENT LICENSE STATUS
VALID

SPECIAL RESTRICTIONS →

DI-60 (6-80)

DATE	SUMMARY	DESCRIPTION	POINTS
05-29-80		ADDRESS CHANGE	
	THE RECORD REFLECTS ENTRIES FOR THE PAST 36 MONTHS		
09-27-79		EXCEED SPEED LIMIT BY 10 MPH	02
10-29-79		P SYS-WARNING LETTER MAILED	
	RECORD END	TOTAL CURRENT POINTS 02	

THE SYMBOL "T" APPEARING IN THE LEFT COLUMN IS NOT A PART OF THIS RECORD.

MD 13031

As Witness, my hand and the seal of this Administration the day and year set opposite.

W. T. S. Bricker

MARYLAND DRIVER RECORD ABBREVIATIONS

..... License Class
CC..... Involved in Accident
BEY..... Abeyance
DP..... Alcohol Education Program
FF..... Affirmed
GREE..... Agreement
LCH..... Alcohol
LT..... Altered
M..... Age of Majority
P..... Application
PR..... Approved or Approval
T..... Attend
UI..... Accident - Uninsured Motorist Case
..... License Class
..... Corrected License
..... License Class
PS..... Complaint or False Statement
NC..... Cancelled
S..... Controlled Dangerous Substance
HM..... Chemical
T..... Circut
LT..... Control License File
R..... Clearance
MM..... Committed
MP..... Complete or Completed
NC..... Concurrent
NF..... Conference
NS..... Consecutive
NT..... Continued
NV..... Conviction
R..... Corrected
T..... Court
..... Days (30D)
..... License Class
..... Duplicate License
C..... Decision
T..... Default
P..... Driver Improvement Program
..... Displaying
T..... District
V..... Motor Vehicle Administration
..... Driving or Driver
C..... Driver Rehabilitation Clinic
..... Date
..... Dealer Tags Only
P..... Duplicate
..... License Class
C..... Express Consent
C..... Education
F..... Effective
P..... Employment
T..... Entry
MP..... Equipment
..... Expired
G..... Exceeding
V..... Excluded Driver Case
P..... Explosives
..... Fatal Accident
IL..... Failing, Failure, Failed
C..... Full Credit
..... Fictitious
NCES..... Financial Responsibility
F..... Fail to Pay Fine
NJ..... Financial Responsibility Case (Acc. Date)
UD..... Fraudulent
..... Failed Test
..... Fail to Appear
..... Hearing (Hearing Officer's Initials)
..... Hazard

HEAR..... Hearing
HFA..... Hearing–Failed to Appear
HGT..... Height
HW..... Hearing Waived
HWY..... Highway
ID..... Identification
IMP..... Improper
INC..... Increase
INF..... Influence
INJ..... Injury
INS..... Insurance
INSTALL..... Installment
INTOX..... Intoxicated or Intoxicating
INVEST..... Investigation
ISS..... Issued
IVP..... Insurance Verification Program Case
J..... MVA Judgment Case
JUDG..... Judgment
LET..... Letter
LIC..... License
LIQ..... Liquor
LO..... Violation of Local Ordinance
M..... Months
MAB..... Medical Advisory Board Case
MAG..... Magistrate
MAIF..... Maryland Automobile Insurance Fund
MD..... Maryland
MISREP..... Misrepresentation
MO..... Motorcycle or Motorscooter
MODI..... Modified
MPH..... Miles per Hour
MSP..... Maryland State Police
MTR..... Motor
MUTIL..... Mutilated
MVA..... Motor Vehicle Administration
N–C..... Nolo Contendere
NEGL..... Negligent
OBT..... Obtain
OP..... Operating
OPR..... Operator
ORG..... Original
O/S..... Out Of State
P SYS..... Point System
PAR..... Parent
PAY..... Payment
PBJ..... Probation Before Judgment
PED..... Pedestrian
PEND..... Pending
PERS..... Person
PD..... Property Damage
PI..... Personal Injury
POS..... Possession
PRIV..... Privilege
PROB..... Probated or Probation
PROH..... Prohibited
PT..... Passed Test
PUR..... Purpose
PWV..... Probation Without (or before) Verdict
R..... Refused
R..... Renewal License
RA..... Application for Reinstatement
Re..... Reissued
REC..... Record
RECD..... Received
RECIP..... Reciprocity
REF..... Refused or Refusal
RE-EXAM..... Re-Examination
REG..... Registration
REIN..... Reinstatement

REL..... Relative
REQ..... Requirement, Require
RESC..... Rescinded
RESCH..... Reschedule
RESP..... Responsibility
RESTR..... Restricted or Restrictions
RET..... Return
RETRO..... Retroactive
REV..... Revoked or Revocation
RI..... Reinstated
RP..... Reprimand
RPA..... Refused or Revoked Pending Appearance
RR..... Restriction Removed
RS..... Random Selection
S..... Substitute License
SAT..... Satisfied
SCH..... Scheduled
SER..... Serial
SIGN..... Signed
SNL..... Signed Statement No License in Possession
SPA..... Suspended Pending Appearance
SPEC..... Special
SS..... Sentence Suspended
STAT..... Statement
SUB..... Substitute
SUBST..... Substance
SUR..... Surrender
SUS..... Suspended or Suspension
SW..... Suspension Withdrawn
SYS..... System
T..... License Type
TEMP..... Temporary
TP..... Test Place
TRAF..... Traffic
TRANS..... Transportation or Transporting
TRK..... Truck
TUN..... Tunnel
TY..... Regular or Photo License
UL..... Investigation-Unable to Locate
UMC..... Uninsured Motorist Complaint Case
UN..... Under
UNATT..... Unattended
UNAUTH..... Unauthorized
UNLIC..... Unlicensed
US..... United States
VEH..... Vehicle
VER..... Verdict
VERIF..... Verification
VIO..... Violation
WARN..... Warning
WARR..... Warrant
WDN..... Withdrawn
WGT..... Weight
WL..... Warning Letter
W/O..... Without
X..... Involved in an Accident
YDIP..... Youth Driver Imp. Program
YR..... Year
&..... And
*..... Points Expired

DRIVER LICENSE RESTRICTION CODES

(As they appear on back of Driver Licenses)

1. Glasses or Contact Lenses
2. Outside Rear View Mirror
3. Valid In the State of Maryland Only
4. Automatic Transmission
5. Directional Signals
6. Daylight Driving Only
7. Limited to Certain Vehicles Only
8. Other–See Special Restriction Card
9. Alcohol

Maryland Department of Transportation
Office of the Assistant Secretary–Administration

Harry Hughes
Governor

James J. O'Donnell
Secretary

TESTIMONY TO THE GOVERNOR'S INFORMATION PRACTICES COMMISSION

Presented by John D. Bertak, Director

Division of Public Affairs

Maryland Department of Transportation

March 16, 1981

Ladies and gentlemen of the commission. Good morning.

My name is John Bertak. I am Director of Public Affairs for the Maryland Department of Transportation. Secretary O'Donnell has appointed me as the department's liaison with this commission.

I have met with the commission's Executive Director on several occasions to discuss issues of concern to you and to clarify and explain the Transportation Department's functions, responsibilities and roles as they relate to areas of study by this group.

My testimony this morning shall cover three areas. First, I will acquaint you with some of the specific responsibilities and requirements of our department and how they relate to personal information, record keeping and public information accessibility.

My telephone number is (301) – _____

Post Office Box 8755, Baltimore-Washington International Airport, Maryland 21240

Secondly, I will present the Transportation Department's concerns and reactions to the specific points raised in the commission's interim report of January 1981.

Finally, since the majority of personal records kept by the Department of Transportation concern the licensing and operation of motor vehicles, I have asked representatives of the department's Motor Vehicle Administration to follow up my testimony with specific information concerning these operations.

We will, of course, attempt to answer any questions raised by you and we will provide you with any additional information you may request as soon as possible.

The Maryland Department of Transportation was created in 1971. It now consists of a headquarters staff and seven major administrations. These are the State Highway Administration, Mass Transit Administration, Port Administration, Aviation Administration, Motor Vehicle Administration, Railroad Administration and Toll Facilities Administration. The department's overall charge is to provide the citizens of Maryland with balanced transportation services and facilities at the most reasonable cost to the taxpapers.

We have, collectively 9,100 employees throughout the state, not including the approximately 800 employees in toll facilities. (Toll facilities operations and personnel are completely financed through user fees and not through any tax sources).

Employee personnel records are maintained by personnel offices throughout the department and are secured under lock and key to prevent unwarranted access. Employee records contain only such information as is deemed necessary under existing regulations. This includes up-to-date status information on salary, leave, etc. No information may be placed in a person's employment record without the knowledge and consent of the employee concerned.

Employees may review the information contained in their files by requesting to do so with their local personnel officer. These requests are few and incidents of erroneous information being found in employee records are rare.

Records of individual grievance actions initiated by employees are not a part of employee personal records but are kept separately under strict security and are available only to the parties involved in the grievance.

Employee personnel records are accessible to an employee's supervisor, however, only verification information will be furnished to anyone other than a supervisor. In other words, a credit company may phone our personnel department to verify information, but they will not be given new information concerning any employee. Home addresses and telephone numbers are never given out.

Our department maintains the payroll records for its employees on the computers of the Functional Data Center at Motor Vehicle Administration headquarters. Payroll records are confidential and authorization from appointed records management officials is necessary to access any payroll information.

I would no like to turn to public affairs activities, specifically media relations as it relates to the concerns of the commission. Under Article 76A, of the Maryland Code, freedom of information and access to public information are covered. Only when requested information can be under specific grounds found in this statute are denials considered.

In my five years with the department I have personally denied specifically requested information only once. That case involved both specific security information concerning department activities and specific information about department employees that could have been injurious to those individuals. The requester initiated the first step of the appeal process but dropped his inquiry when a modified version of the document was made available to him.

The guiding precept of public affairs in government should be "openness." We attempt to continuously impart to all department employees that every action they take on the job is subject to

public scrutiny. At the same time we have a moral and legal obligation to protect the privacy of our employees and we attempt to ensure that these guidelines do not create problems for them.

My experience and that of my colleagues within the transportation department has been such that I do not feel changes in legislation are necessary at this time concerning Article 76A. The publication of guidelines by the Attorney General's Office last year made interpretation of the statute clearer and again notes that only specific itmes may be denied under the law.

The interim report issued by the commission in January raises many questions and issues with a potential impact upon the Department of Transportation. Among those issues are the collection, maintenance, dessemination and accessibility of personal information which are the responsibilities of some of this department's agencies.

One major omission we see in the report is that "personal information" is not clearly defined. We believe a clear definition of "personal information" would enable us and the commission to more precisely review specific areas of concern. It is one thing to have access to a person's name and address. It is quite another to have access to the same person's income tax history, for example.

The interim report also addresses the use of computers to store, retrieve and maintain personal information. At the Department of Transportation we are nearing the opening of the DOT Functional Data Center adjacent to the Motor Vehicle Administration headquarters in Glen Burnie. This data center, will house the latest in computer hardware and replace existing computers now in use by MVA, the State Highway Administration and other elements of the department. The physical security of records - specifically driver record information - will be covered by MVA representatives. On the question of building security, I would like to assure you that every effort has been taken to make this facility secure. While we're not naive enough to believe that y system is foolproof, we feel the measures being used in our Data Center will make it as secure as any such facility can possibly be.

I do not doubt that the accessibility of driver records and vehicle registration records would come as a surprise to many individuals who are unaware that their records are public information. Perhaps people should generally be more aware of this. At the same time, however, I am unaware of any "negative" issues which result from the openness of these files. I would ask the commission to approach it's review with a similiar consideration - before proposals are made that would change existing procedures or legislatively mandated activities. I feel it must be shown that present practices are demonstrably detrimental to individual freedom and/or privacy.

Some of the specific questions covered in the interim report will be addressed by my colleague from the MVA as to impact on that agency. I will address some similar concerns on a department-wide basis.

Item number seven in the report, requiring publication annually of the types of information held, locations, accessibility, etc. would place a tremendous administrative load on all state agencies. I can only speak for DOT, but I know we are not maintaining any secret files either concerning individuals or businesses. Considering the amount of business conducted annually by an agency as large as DOT, the publishing of such a document annually would probably require the addition of two full-time positions.

Concerning access to information, our department meets current legislative requirements in this area by having a system of records management officers responsible for the maintenance of all records. We also have an approved Citizen Response Plan which assigns responsibilities and outlines requirements for dealing with requests for information.

A final comment in closing my portion of this testimony. It may be my personal nature, or my concern about open government, but for whatever reason I believe strongly that we should always strive for openness in public record keeping. I agree with the commission's report that only such information about a person should

be collected and maintained as is necessary for the conduct of business. And if that is one of the guidelines, then the need for any efforts that would limit information dissemination is considerably reduced.

Thank you.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

OFFICIAL MINUTES

GOVERNOR'S INFORMATION PRACTICES COMMISSION APRIL 27, 1981

The April 27, 1981 meeting of the Governor's Information Practices Commission was devoted to an examination of the federal Privacy Act of 1974 (Public Law 93-579). Members of the Commission in attendance were: Mr. Arthur S. Drea, Jr., Mr. Albert J. Gardner, Jr., The Hon. Timothy R. Hickman, Mr. Donald Tynes, Sr., Mr. Robin Zee, Mr. E. Roy Shawn, and Mr. John Clinton.

It should be noted that PL 93-579 is much more explicit than current Maryland statutes in the area of confidentiality of personal records in the possession of government agencies. As a consequence, the Commission was anxious to assess the effectiveness of the Privacy Act. With this in mind, the Commission heard testimony from Ms. Cecilia Wirtz, Assistant General Counsel for the Office of Management and Budget (OMB) and Mr. Robert Veeder, Office of Information and Regulatory Affairs, OMB.

Ms. Wirtz began by outlining some of the materials which OMB had submitted to the Commission staff. She then explained that OMB has the responsibility to give oversight and guidance in the area of privacy and has the authority to issue regulations and guidelines. Mr. Veeder stated that an OMB Guideline (dated July 1, 1975) goes through the act point by point, attempting to describe the kinds of situations that were anticipated to occur under each section. OMB Circular A-108, he added, delineates the responsibilities of federal agencies in complying

with PL 93-579.

Ms. Wirtz and Mr. Veeder explained that the Privacy Act defines a record as a single item of information. They defined a system of records as a collection of these records - retrieved by reference to a personal identifier. Records not retrieved in this manner, they noted, are not covered by the Act. Before an agency can collect and use information, notice must be published in the Federal Register describing systems of records, giving uses of information, safeguards, and so forth. Agencies are also required to submit a report to OMB and Congress on other aspects of information collection.

Ms. Wirtz added that publication in the Federal Register is public notice, and that there is nothing in the Privacy Act giving an individual a legal right to stop an agency action. Ms. Wirtz cited a case two years ago involving the Department of Health, Education, and Welfare (HEW) when it ran a program on welfare recipients on the federal payroll-both civilian and military-to see who was defrauding the government. The American Civil Liberties Union objected and the Department of Defense (DOD) stopped the process. However, OMB maintained that the process was legal so long as DOD published a notice in the Federal Register identifying the fact that it was going to release this information to another agency for this purpose.

Ms. Wirtz observed that an agency must notify an individual when information is collected (through a Privacy Act notice on every form) of the purpose of collection, routine uses of the information, and whether disclosure of the information is mandatory or voluntary. If a use of the information falls within the category of "routine use"-defined as a use compatible with the purpose for which the information was originally obtained-the agency can create routine uses subsequent to collecting the information. As long as this is published in the Federal Register, it permits dissemination both within and outside of the Federal government. Ms. Wirtz stated that this is the main tool for disseminating information without the individual's permission. In addition, she noted that Subsection B of the Privacy

Act governs third party access and lists 11 circumstances where the agency does not need the permission of the individual. In these cases, disclosure is at the discretion of the custodian of the record.

Ms. Wirtz explained further that the agency head determines whether a subsequent use is a "compatible use" and there has been no case where the compatibility standard had been challenged in federal courts. She asserted that the Privacy Protection Study Commission had identified the "routine use" section as one of the most abused sections of the Privacy Act. Ms. Wirtz added that the Act also allows the individual the right of access and provides for quality control (in terms of records management-what agencies should keep, how long, accuracy, etc.).

There has been some conflict, Ms. Wirtz stated, over the fact that the Privacy Act only deals with information pertaining to an individual (defined to be a citizen or legal alien). It deals neither with businesses nor to an individual operating in his business capacity. Mr. Veeder added that correspondence filed by date (if an agency is only interested in when someone wrote, not who wrote), is not considered a record system unless it is changed and information is retrieved by a personal identifier.

Senator Hickman asked if information that is not considered to be in a record system under the Privacy Act could be disseminated to someone who then established and maintained the information in a retrievable system. Ms. Wirtz replied that the second person would create a record system if he used a name or identifier to retrieve the information. It became apparent in further discussion, that a system of records covered by the Privacy Act could be excluded from the provisions of the Act if the system were no longer retrieved by name or personal identifier. The agency would then be able to disclose the information to someone outside the federal agency who could reestablish the system using identifiers.

Another point brought up by Ms. Wirtz was the fact that OMB rarely receives questions regarding individual access. Most inquiries concern such things as whether or not systems exist and whether information can be disseminated.

In response to a question from Mr. Drea, Ms. Wirtz discussed the meshing of the Privacy Act and the Freedom of Information Act (FOIA). She said that the Privacy Act has its own definition of a record while FOIA does not. In addition, Ms. Wirtz asserted that the Privacy Act has two provisions referring to FOIA. One (the B2 provision) states that an agency may release information without the individual's permission if it would be required to be released under FOIA as public information. The second provision (Subsection Q) states that an agency may not use the specified exemptions of FOIA to deny records to an individual which he would otherwise be able to receive.

Under FOIA, Ms. Wirtz explained, a typical B-5 denial is the intra-agency memorandum exemption. Agency memos in an individual's file (if the file is in a record system) cannot be witheld if he requests access under the Privacy Act because there is no comparable exemption under the Privacy Act. If he requested access under the FOIA, however, these memos could be witheld.

Under the Privacy Act, the individual has the right to obtain all of his records with three exceptions:

1) D5-records compiled in reasonable anticipation of civil action or proceeding

2) J exemptions-CIA/law enforcement records

3) K exemptions-general exemptions covering the rest of the agencies

Under a J and K exemption, the individual gets everything except information which would give or lead to the identity of a confidential source.

The problem, Ms. Wirtz stated, is that there exists a large area that is unclear. For example, what does the agency do if the individual requests records under the Privacy Act versus FOIA or FOIA versus the Privacy Act since they have different provisions and treatment? A request under one Act may be denied while under the other, the information could be released.

Ms. Wirtz added that there is a provision under FOIA-the B3 exemption-that states that if there is another federal statute that limits access to certain records-the agency can deny access to those records. Based on this, there are three

circuit court opinions asserting that an agency may withold information if the request was made under FOIA and if under the Privacy Act the agency would have been able to deny access. This has led, Ms. Wirtz explained, to controversy over the fact that an agency can deny a request from an individual under FOIA by reading the Privacy Act into the situation but at the same time can't deny the information to a third party. Ms. Wirtz offered to send copies of these court opinions to the Commission.

Mr. Drea asked if there had been much litigation on the issue of routine use. Ms. Wirtz responded negatively.

Mr. Zee asked if the National Archives and Records Service had a different definition of a record. Mr. Veeder responded that the Records Service was more concerned with a record as a physical entity while the Privacy Act focused on the informational content of a record.

In response to a question from Mr. Zee, Mr. Veeder replied that the National Archives and the Records Service has record schedules for disposition. He noted that under the Paper Reduction Act, OMB was charged with records management and was attempting to mesh the different concepts.

Ms. Wirtz added that there is only one provision of the Privacy Act that deals with the length of time a record should be kept, and it deals with the accounting of disclosures, not the record itself. This accounting is kept for the life of the record or five years, whichever is longer.

Mr. Veeder stressed two provisions of the Privacy Act:

1) the requirement to give public notice of a system of records

2) an accounting of what was done with the information

Mr. Veeder said that 6-7,000 notices are published each year with an approximate cost of over one million dollars. In six years of overseeing the Act, OMB averaged only 7 comments a year. No one ever asks to see the accounting logs, he added, which also cost a great deal to set up and operate. Mr. Veeder noted that the Reagan administration is looking for ways to cut back and new ways to accomplish the goals

of the Privacy Act. In addition, Ms. Wirtz stated, there are provisions for correction of records. The agency is required to go back and inform previous recipients of records of any corrections that have been made.

In response to a question from Mr. Zee as to whether there had been any thought of combining FOIA and the Privacy Act, Ms. Wirtz discussed the history of the two Acts. Mr. Veeder mentioned that there had been some talk about taking the access provisions out of the Privacy Act and putting them into FOIA.

Ms. Wirtz added that the Privacy Act will be amended by the Debt Collection Act of 1981. Discussion ensued on the differences between the last administration and the present. She noted that this administration is emphasizing efficiency-meaning data and data sharing. The pending amendment creates a new exemption to permit the release of bad debt information to credit reporting bureaus.

Senator Hickman asked about the status of guidelines issued by the Federal Privacy Protection Commission for state and local governments and the private sector. Ms. Wirtz replied that the Commission made recommendations in such areas as Medical Records and that these recommendations were adopted as legislative proposals by the Carter administration. She noted that these proposals did not get very far.

Mr. Hanratty asked if there was a section of the Privacy Act that could be eliminated in order to minimize costs without jeopardizing the spirit of the Act. Mr. Veeder and Ms. Wirtz mentioned the publication requirement of the systems of records as being one area where savings could be made.

Discussion followed on the need for training of federal employees in the Privacy Act. Ms. Wirtz stated there is not enough awareness of the mechanisms of the Act. Ms. Wirtz said that a number of legislative proposals in the last two months advocate things that are already permitted by the Privacy Act; however, many people are not aware of the various provisions of the Act.

Ms. Wirtz and Mr. Veeder added that some agencies which receive more requests are more familiar with the Act and that larger agencies often have one individual handling privacy issues. They also noted that gathering record systems has led to identification of duplication, which has been beneficial.

In response to a question from Senator Hickman as to whether there had been any documentation of the savings caused by the Privacy Act, Mr. Veeder responded negatively. The cost estimates have been done only on start up and operating costs; however, he noted that these are very hard to isolate.

Senator Hickman asked if actual publishing and dissemination costs could be distinguished from the cost of putting information into a certain form. Mr. Veeder replied that the million dollar figure referred to earlier only covers the cost of publication in the Federal Register.

In the discussion that followed, Mr. Veeder stated that (before the Privacy Act required it) most agencies did not have a listing of their record systems. The agencies with good records management programs had files identified for disposition purposes and could translate that into a record system.

Mr. Veeder noted that most individuals making Privacy Act requests ask for all information pertaining to them and do not ask for access to a specific record system. Thus, it would appear that the record systems statements appearing in the Federal Register are not extensively used by individuals.

Ms. Wirtz mentioned that some agencies have tried to deny access because the individual cannot identify the exact system of records. She also noted that under FOIA, the agency can collect search and reproduction costs but that agencies can only collect reproduction costs under the Privacy Act. The assumption is that agencies are aware of the personal record systems in their possession.

Senator Hickman asked about the number of persons requesting to examine personnel documents. Ms. Wirtz replied that most requests are in the personnel area with the number depending on the agency. She noted that these requests are not on the volume of FOIA requests.

In response to Senator Hickman, Ms. Wirtz stated that FOIA provides the right of access to government records in general, there being no requirement to identify systems. Senator Hickman wondered how an agency can disseminate information under FOIA if it doesn't have a catalog of records. Ms. Wirtz replied that FOIA deals with everything and not just information concerning individuals.

Mr. Gardner asked if there were any figures on the number of agencies that identify one or more individuals specifically charged with privacy functions. Mr. Veeder replied that 15 agencies had at least one person in this area and that perhaps a total of 30 persons spend most of their time on privacy. He noted that there are simply not that many requests for information. Mr. Veeder added that it is difficult to determine what are actual privacy requests. Many Privacy Act requests are actually information requests that would have been honored previous to PL 93-579.

Mr. Clinton asked if any agencies had resisted complying with the requirements of the Privacy Act. Ms. Wirtz and Mr. Veeder replied that this was not the case although some agencies have taken a long time to publish their systems of records. However, both felt that this was an internal administrative problem rather than an effort to resist the mandates of the Act.

Ms. Wirtz described another area which had been a source of problems: Subsection M (The Contractor Provision). This is the only provision that goes into the private sector. (Subsection M reads as follows: "When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.")

Ms. Wirtz illustrated the complexity of this section by pointing to the case of a private company conducting survey research for the federal government. Even if the company only releases non-identifiable statistics to the government, it might

have collected personally identifiable information in the course of conducting its research. The question then becomes: does the Privacy Act still apply if the agency had access rights to personally identifiable data but only asks for the non-identifiable data? The interpretation of OMB was that the provisions of the Act still applied.

However, in a similar case, the Supreme Court ruled that the provisions of FOIA did not apply if an agency had access rights to information developed by a contractor but did not request the data.

Mr. Drea asked why the definition of records under the Privacy Act didn't preclude the information itself since it was not identifiable information. Ms. Wirtz replied that if the agency caused the contractor to collect the information, then the provisions of the Act applied. Mr. Veeder added that the agency is responsible for the information collected and it cannot escape this requirement just by contracting it away.

However, Mr. Veeder explained that if the contractor opted on his own to collect personally identifiable information (i.e. there were other ways in which the terms of the contract could have been fulfilled), then the Privacy Act did not apply. If the government agency left the decision to the contractor as to whether or not personally identifiable data would be collected, then the information does not fall within the context of the Privacy Act. If, however, the contractor had to collect identifiable data as the only way to fulfill the contract, then the agency is not released from the provisions of the Act.

Ms. Wirtz highlighted another section of the Act-The Remedies Provision. Under the Privacy Act, the individual has causes of action to enforce his right of access, right of correction and to force agencies to comply with the statute. There is, however, no injunctive relief to prevent the agency from releasing information in violation of this law.

Mr. Drea asked if injunctive relief was not inherent in the courts. Ms. Wirtz responded that it was not, in the view of the 9th Circuit Court. In contrast, under

FOIA, injunctive relief has always existed.

In response to Mr. Zee, Ms. Wirtz and Mr. Veeder replied that some legislators had originally objected to the Privacy Act because of fear of curtailment of law enforcement activities and investigatory agencies. They noted that legitimate access to law enforcement is provided in the Act. In addition, use of social security numbers and fear of increased computerization were issues that surfaced at the time that the Act was being considered by the Congress.

Ms. Wirtz mentioned that use of the Social Security number is not forbidden; an agency just may not preface a right, benefit or privelege upon the supplying of that number. In addition, the courts have concluded that a subpoena is not an order of a court of competent jurisdiction.

Mr. Clinton noticed that according to the Privacy Act, mailing lists cannot be sold or rented unless such action is specifically authorized by law. Ms. Wirtz noted that under FOIA an individual can ask for all kinds of information and construct a list. One problem is that there is no definition of "sale or rent".

Ms. Wirtz described a case that involved an individual who obtained information from personnel files regarding who had not bought savings bonds. He then contacted the persons and urged them to buy bonds. The courts ruled that the persons contacted had a right to sue and that emotional harm can be recovered under the Privacy Act.

Ms. Wirtz provided an example of another case where the Courts found the Privacy Act to be inapplicable. There is a provision in the Act dealing with information relating to an individual's qualifications for federal employment. It states that the agency can withold information on the identity of a confidential source. One person wanted to challenge information that turned up in a review of her qualifications. The agency wouldn't release the name of the source and the source would not volunteer his name. The person sued and the court held that the constitutional right to confront witnesses prevailed unless the agency wanted to change the information. Ms. Wirtz maintained that these cases place a standard on the agencies in

terms of their records management.

Mr. Hanratty described three types of oversight of privacy legislation which he has encountered in other states: 1) no oversight established by statute; 2) oversight placed with an existing agency; 3) an independent entity is established to provide oversight. Mr. Hanratty asked Ms. Wirtz or Mr. Veeder for recommendations regarding which path should be followed by the Information Practices Commission, if the Commission determines the need for such legislation.

In the discussion that followed, Ms. Wirtz and Mr. Veeder stated that they had found the greatest need for oversight in the area of formulating major policy issues. Ms. Wirtz said that if there is a state body already performing this function, it might work out. However, she prefered oversight of privacy legislation not going to an agency with other responsibilities. Mr. Veeder added that if an independent agency were established, it was important to staff it sufficiently, with enough breadth and with enough authority.

Mr. Drea asked if Ms. Wirtz or Mr. Veeder saw any problems with the Attorney General's Office overseeing any privacy legislation in addition to the Public Information Statute. Ms. Wirtz responded negatively.

Mr. Drea asked if Ms. Wirtz or Mr. Veeder were to draft a state privacy act, would they limit it to records dealing with personal information, or broaden its scope? Ms. Wirtz replied that she would maintain the distinction. Mr. Veeder added that he would make any Act as simple as possible.

Mr. Drea asked a final question as to the meaning of exemption D5-reasonable anticipation of civil action. Ms. Wirtz replied that usually an agency has a procedure where it eventually gets into court or can have the right to go to court. Ms. Wirtz added that this exemption is infrequently used.

The meeting adjourned at that point with the next meeting being scheduled for May 11, 1981.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

OFFICIAL MINUTES-GOVERNOR'S INFORMATION PRACTICES COMMISSION MEETING - May 26, 1981

The meeting of the Governor's Information Practices Commission on May 26, 1981 was held at the Motor Vehicle Administration in Glen Burnie. Members of the Commission in attendance were: Mr. Arthur S. Drea, Jr., Mr. John Clinton, Mr. Robin Zee, Mr. Donald Tynes, Senator Timothy Hickman, Mr. Wayne Heckrotte, Mr. Albert Gardner and Mr. E. Roy Shawn.

Mr. Drea opened the meeting by thanking Motor Vehicle Administration (MVA) officials for scheduling the meeting and reiterated the Commission's desire to discuss the issues outlined in the report which had been completed by the Commission staff on MVA's record-keeping practices.

Mr. Hanratty referred to the list of questions that he had sent to Mr. Bertak, MVA's liaison with the Commission, and the list of responses from MVA, both of which were attached to the report. Mr. Hanratty referred to the first question, asking what type of personal information is collected. He stated that MVA's response had indicated that the only personal information maintained by the administration was that collected by the Medical Advisory Board. Discussion followed on the need for a definition of "personal information". After the term was defined, Ms. Agnes Stoicos, Associate Administrator, indicated that MVA's response to this question was erroneous. Because MVA records are public information, this data had not been considered to be personal information.

The second issue brought up by Mr. Hanratty was the question concerning the access rights of the person in interest. MVA had responded that the individual has this right. However, Mr. Hanratty added, the manual of the Medical Advisory Board indicates that the person in interest only has a limited right of access. His lawyer is allowed to see "confidential" material but cannot reveal it to his client. MVA officials pointed out that often the information in Medical Advisory Board files may be detrimental to the person in interest. The papers which are confidential have been stamped as such by the doctor himself.

Discussion followed on the legal basis for restricting access. It was pointed out that this was the result of the settlement of a court case. Mr. William Long, Assistant Director, Division of Systems Planning and Implementation, pointed out that the records of the Medical Advisory Board are confidential by statute; however, the statute does not specify issues related to the person in interest.

Mr. Hanratty moved on to a third question directed to MVA: Are individuals made aware of their access rights? Although MVA had responded affirmatively, Mr. Hanratty questioned whether most citizens are aware of this right. Ms. Stoicos explained that MVA was in the process of revising the drivers' handbook and that a statement was to be included in the new handbook indicating the public character of driving records. It was suggested in the discussion that ensued that currently licensed drivers could be informed of their rights through their license renewal packets. Mr. Long added that expungement requirements might also be made known to the public in this fashion.

The subject of disclosure logs was introduced. MVA officials stated that such logs are kept and that an individual can request to see them. Mr. Hanratty noted that although MVA had indicated that the reason for the request was listed in the disclosure log, no reason was required when a Commission staff member visited MVA and requested to view a record. Mr. Long stated that this was required when a list was requested

or when a lawyer wanted a driving history in excess of three years.

MVA representatives pointed out that state, local and federal governmental agencies can obtain a total record. Mr. Hanratty noted that this was not indicated in MVA's reply to his questions.

In addition, the lack of verification of the identity of the requestor was discussed. MVA representatives indicated that procedures in this area were being developed and agreed that maintenance of disclosure logs was pointless without verification of the identity of the requestor.

Mr. Hanratty also discussed the response of MVA to the question regarding whether a security risk analysis had been conducted. MVA officials stated that they had not understood exactly what was entailed by the term "risk analysis." Mr. Heckrotte and Senator Hickman discussed the various aspects of a risk analysis. MVA representatives noted that, to their knowledge, no such analysis had been conducted. The officials stressed that physical security was good and indicated that they had focused on security measures aimed at preventing the altering of data rather than measures preventing access to data since driving records are public documents. It was also noted that a security officer had recently been appointed. Mr. Drea suggested that the Commission might recommend that a risk analysis be performed across the state for every agency.

Discussion ensued concerning the accessibility of MVA records through the judicial system. Mr. Robert Smith, Assistant Attorney General, brought up the point that once Medical Advisory Board records are turned over to a court on appeals, they become court records and are available for public inspection. Mr. Drea inquired as to who was responsible for the security of computer terminals in the courts. MVA officials indicated that responsibility fell within the jurisdiction of the courts. Mr. Drea

cited an incident illustrating the need for a closer examination of the security of these terminals. Senator Hickman added that security should be the responsibility of the agency that generates the information.

The issue of expungement was again discussed. Expungement is not an automatic process, but instead is only performed upon the request of the driver. MVA representatives explained that when the driver meets the criteria for expungement, he must sign a statement indicating that there are no outstanding citations that have not been adjudicated. If expungement were automatic, it would be difficult to verify whether any outstanding citations existed.

Mr. Hanratty noted that the Commission had received a complaint from a driver who stated that he was denied access to his complete record and was only able to obtain it after signing a statement indicating that it was for his own personal use. MVA representatives felt that this was probably due to a clerical error. Mr. Hanratty asked that MVA officials check with the Gaithersburg office to find out what happened.

Mr. Hanratty asked if MVA representatives felt there should be any restrictions on the information disseminated by MVA or whether the individual driver had any right to restrict the use of information. MVA officials indicated that they would provide written comments to these issues to the Commission.

Senator Hickman stated that the Commission had delinated several "principles of privacy" in the Interim Report and asked if MVA representatives had any disagrement with any of the principles. Mr. Hanratty added that he had sent the Interim Report to Mr. Bertak. MVA officials indicated that written comments would be forwarded to the Commission.

The next meeting of the Information Practices Commission was scheduled for June 8, 1981.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

June 3, 1981

OFFICIAL -MINUTES OF GOVERNOR'S INFORMATION PRACTICES COMMISSION-May 11, 1981

Members in attendance at the May 11th meeting of the Information Practices Commission included: Mr. Arthur S. Drea, Jr., Senator Timothy Hickman, Mr. Dennis Sweeney, Mr. Wayne Heckrotte, Mr. Donald Tynes, Mr. Robin Zee and Mr. John Clinton.

The minutes from the January 19, 1981 meeting and the two public hearings were approved and adopted as official.

The focus of the meeting was the discussion of four reports which had been previously distributed to Commission members on the Motor Vehicle Administration (MVA), the State Scholarship Board, the Elections Board, and the State Department of Education.

Mr. Hanratty opened discussion of the MVA report by noting that a copy had been sent to Mr. Bertak, liaison with the Department of Transportation, with a request for comments from MVA officials. In addition, Commission members expressed a desire to meet with MVA representatives. After discussion, Commission members agreed to schedule this meeting tentatively for May 26 at 3 P.M. and to determine if it would be more convenient to hold the meeting at MVA.

Mr. Drea informed the Commission members that House Bill 1287 had passed in spite of the Commission's request that it be deferred. He noted that it had not yet been signed by the Governor. (House Bill 1287 was signed by the Governor on May 12, 1981.) Mr. Hanratty added that the bill is discussed in

the report on health facilities and that a copy of the bill is attached to the report. The Commission decided that it would not express an opinion on the bill to the Governor.

Mr. Hanratty reviewed the pertinent issues brought out in the MVA report. He noted that Appendix A contains a list of questions on record-keeping practices which was sent to MVA and that Appendix B consists of the responses of MVA. Mr. Hanratty stated that he has some disagreement with specific responses.

First, in response to a question concerning what type of personal information is collected, MVA replied that the Medical Advisory Board is the only area that collects personal information. Mr. Hanratty felt that the term "personal information" had been misinterpreted.

Second, when asked whether individuals have access to information pertaining to them, MVA replied affirmatively. Mr. Hanratty explained that this is true with the exception of the Medical Advisory Board files. These are in a special category which allows only limited access. Mr. Hanratty stated that the Procedures Manual that governs the policies of the Medical Advisory Board allowed access to "general" records to the person in interest. A lawyer is allowed access to "confidential" records but may not reveal information in those records to his client.

Mr. Sweeney added that, in his experience, no one was allowed to see the record held by the Medical Advisory Board. He suggested that this access to a lawyer may have come about as a result of a compromise settlement of a lawsuit. It was noted that quite a few cases referred to the Medical Advisory Board dealt with alcoholism, psychiatric problems, senility, etc., which are situations where personal information (if available to the person in interest) might be detrimental.

Senator Hickman added that at the White House Conference on Privacy held a few years ago, there was a notable disparity between states in their definitions of what information is personal, what is public, and what is confidential.

At this point, Mr. Drea interjected a procedural note. He suggested that the Commission members discuss all of the reports and then, when finished, return and summarize the issues which they feel should be addressed. The members agreed to this.

Mr. Hanratty mentioned a third area of disagreement with the responses of MVA. When asked if an individual is made aware of his access rights, MVA replied that access is provided in law. Currently, Mr. Hanratty suggested, the public is not told of their access rights in any of the materials issued by MVA. He felt that MVA should institute policies to educate the public of its rights.

A fourth problem identified by Mr. Hanratty involved the degree of awareness of individuals to the uses of information.pertaining to them. Although MVA responded affirmatively, Mr. Hanratty suspected that many people do not know that anyone can obtain a copy of their driving records. In light of the fact that an individual is not informed through MVA materials that driving records are public information, it seemed unlikely to Mr. Hanratty that individuals are aware of the uses to which the information can be put.

Mr. Hanratty discussed the issue of disclosure logs as a fifth area of disagreement with the MVA report. The Administration indicated that such logs are maintained and that, for all records, name and address of subject, reason for request, and name and address of requestor are recorded. Mr. Hanratty noted that the forms used to view a driving record and to purchase a certified copy of such a record do not provide a space to record the reason for the request. Mr. Hanratty also stated that a staff member of the Commission had visited the MVA headquarters and asked to examine and obtain a driving record. The clerk did not ask the staff member to provide a reason for the request, nor did any verification of identity occur.

Mr. Zee asked about the purpose of verifying the identity of the requestor. Mr. Hanratty replied that this would allow the person in interest to examine the logs to determine who has been looking at his record; without verification of

identification, the logs could easily contain fictitious names.

Discussion ensued over the appropriateness of permitting public access to driving records. Mr. Sweeney questioned the justification of the public character of such records. Discussion among members centered on the many uses that agencies make of driving records and how information contained in a record can be detrimental to an individual seeking employment, even when driving is not required in his job. Members generally agreed that when an individual applies for a license, he should be informed of the uses to which the information can be put. Limited access (except for justifiable exceptions-law enforcement) was suggested. An individual could then authorize access to his record to whomever else he wanted, such as an insurance company.

The Medical Advisory Board was mentioned again by Senator Hickman. He cited the example of an individual over 70 who is required to appear before the board for review. Senator Hickman questioned whether an attorney can obtain the name of a person who files a complaint against another. Mr. Hanratty replied that, according to his interpretation, the attorney could find out but could not disseminate that information to his client. Senator Hickman suggested that in the case of malicious complaint, the attorney could ascertain who filed a complaint but the individual would not be able to sue.

Mr. Hanratty noted that the sixth response of MVA which appeared problematic involved the issue of risk analysis. MVA indicated that a risk analysis had been conducted, observing that authorized personnel only access certain information. Mr. Hanratty felt that this answer gave the impression that a risk analysis had not been performed. Commission members discussed what is entailed by a risk analysis. Mr. Heckrotte described it as a procedure to determine the worth of the information, the likelihood of there occurring unauthorized access to the information, and the potential loss if the structure housing the information was damaged. Senator Hickman noted that the Comptroller's Office appeared to have been the only state agency to have conducted a risk analysis.

Mr. Hanratty mentioned that he had received a complaint from a Montgomery County bus driver. The bus driver alleged that he had been charged with the unauthorized use of a vehicle while a minor, and that the matter had been handled through the juvenile justice system. When he happened to examine a copy of his complete driving record, he discovered that the juvenile conviction was included.

Senator Hickman explained that Montgomery County was the only county that informed the MVA of juvenile driving cases that were alcohol related. He noted that the 1981 General Assembly had passed a bill that would require the other counties to conform to the practice of Montgomery County.

With regard to the case of the Montgomery County bus driver, Mr. Drea observed that another area of concern was the fact that his employer had obtained a copy of the complete record, not merely the last three years. Mr. Drea noted that according to the responses received by MVA, the employer, Montgomery County government, should not have been provided with a copy of the complete record. However, if the request had been made by the Montgomery County police, the entire record would be provided. Mr. Hanratty noted that the bus driver also alleged that he had experienced considerable difficulties in obtaining a copy of a complete record for himself.

The final issue raised by the case of the bus driver involved that of expungement. Mr. Hanratty noted that MVA is required to expunge driving records if certain criteria are met. However, expungement is not an automatic process; the individual driver must request expungement. In Mr. Hanratty's opinion, this procedure only rewards those drivers who are knowledgeable about the expungement process. The Montgomery County bus driver asserted that he could have had his conviction expunged, but he was not aware of the fact that this could be done.

The Commission briefly examined the report dealing with Voter Registration Records. Mr. Drea noted that the report indicated that there were some variations in the type of information collected from individuals by the different

county boards of election. Mr. Drea observed, for example, that Prince George's County requires applicants to state whether they are military or civilian, while two counties require marital status. Mr. Heckrotte felt that the only types of information that should be collected were name, address and party affiliation. Mr. Hanratty noted that the report also indicated that there exist significant variations in the type of information disseminated by the boards. The Commission also discussed the appropriateness of using voter registration lists for other purposes, such as jury selection.

The third report discussed by the Commission was the State Scholarship Board. Mr. Hanratty expressed concern that there were no procedures governing the dissemination of information for the Senatorial Scholarships. Once financial data is sent to the 43 Senators, there is no one really responsible for the information and no regulations governing its protection. Discussion focused on whether the State Scholarship Board has the legal authority to issue regulations requiring Senators to safeguard the information. While this point was not resolved, it was agreed that the Senate itself could develop "in-house" regulations.

The final report examined the Department of Education. Mr. Hanratty noted that the record-keeping practices of the Department were impressive. Because the Department operates under fairly strict federal regulations, the Department of Education has developed a number of procedures such as disclosure logs and access to the person in interest, which might be considered state-wide by the Commission. Mr. Hanratty visited the Anne Arundel County Board of Education and found that the County had developed very strict standards regarding the dissemination of personally identifiable data. In general, the County Education Officials felt that the county has found that the federal privacy legislation had been quite beneficial in terms of protecting students' records.

Mr. Sweeney questioned whether the Department of Education would be a good comparison to all agencies. He felt that the personnel are highly sensitized

to these issues due to the nature of their training.

Returning to the main Education Report, Mr. Hanratty noted that Vocational Rehabilitation Records are less regulated than others, and directed the Commission's attention to a chart comparing these records with those of Special Education. Mr. Sweeney asked if there wasn't a state statute prohibiting the release of vocational rehabilitation records except by court order. Mr. Hanratty replied that he was not sure.

Mr. Hanratty noted that in his visit to the Anne Arundel County Board of Education, he discovered that the development by that board of a catalogue of record systems had not resulted in a reduction of the number of records or in a reduction of personal data collected. This point coincided with a concern expressed by Mr. Hanratty over the amount of information collected from individuals by education agencies. In the report examining the record-keeping practices of the Department of Education, a concern was expressed about the amount of personal data required by the Pupil Data System.

Mr. Zee asked about the jurisdiction of the Commission over the collection of data. Mr. Drea replied that the Commission can made recommendations in this area. Senator Hickman added that some states have a statute saying the individual is not required to answer any questions unless the agency has the statutory authority for asking the question.

Mr. Hanratty concluded the analysis of the Department of Education by referring to a list of questions that could be asked about the record-keeping practices of the Division of Vocational Rehabilitation.

In the discussion that followed, it was agreed that reports would be sent to the agencies after they had been reviewed by the Commission. A cover letter would highlight issues of interest to the Commission and request comments and feedback.

The meeting was concluded with the staff being instructed by the members to attempt to schedule a meeting with MVA officials on May 26th.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

ARTHUR S. DREA, JR.
CHAIRMAN

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MINUTES OF THE GOVERNOR'S INFORMATION PRACTICES COMMISSION MEETING OF June 8, 1981

The meeting of the Governor's Information Practices Commission was held on June 8, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Mr. John Clinton, Mr. Robin Zee, Mr. Donald Tynes, Senator Timothy Hickman, Mr. E. Roy Shawn, and Mr. Albert Gardner, Jr.

The minutes from the meeting of April 27th were approved pending any changes by Ms. Cecilia Wirtz and Mr. Robert Veeder, representatives from the Office of Management and Budget who had testified at the meeting. If there were no changes made, the minutes would be adopted as final. In addition, the minutes of May 11th were distributed.

Mr. Drea noted that he and Mr. Hanratty would be appearing before the House Constitutional and Administrative Law Committee to brief them on the Commission's activities, findings and direction. The members of the Commission were invited to attend.

Senator Hickman suggested that a briefing should also be held in the fall with the Senate Constitutional and Public Law Committee. Mr. Drea said that a joint session of both House and Senate Committees would be the ideal, but that the Information Practices Commission would accommodate the wishes of the committees.

It was pointed out that mileage reimbursement forms should be turned in by the end of June so that reimbursement could be made from the 1980 fiscal year budget.

The Commission then discussed the report examining the record-keeping practices of health facilities. Ms. Thea Cunningham referred to the Addendum which had been

distributed to members. She enumerated the findings of the survey that were listed in the Addendum:

1) A lack of guidelines governing the collection of information.

2) Variable policies on the issue of access to the person in interest (now provided by House Bill 1287).

3) Lack of correction procedures (now provided in House Bill 1287).

4) Lack of redisclosure provisions.

5) Uneven security measures.

6) Lack of a written policy on the Public Information Act.

7) Inadequate notification of rights to the person in interest.

Senator Hickman asked if there were notable differences in operations and policies between like facilities. Ms. Cunningham responded affirmatively. Senator Hickman added that a task force had recommended three years ago that comprehensive rules be adopted across health facilities in the areas of records and disclosure and noted that apparently this had not been done.

Mr. Drea added that since House Bill 1287 had passed, the responses of the facilities to several of these questions may have changed. Since they would be involved in developing new access policies, perhaps patient information and other issues would be addressed.

Ms. Cunningham introduced a representative from the Maryland Medical Records Association, Mr. Morgan, to the Commission. Mr. Morgan is also the Director of Medical Records Department for Anne Arundel General Hospital.

Mr. Morgan stated that the Association had supported House Bill 1287 and has developed a set of interpretive procedures which are currently being printed. He offered to send a copy to the Commission. Mr. Morgan explained that the Association has attempted to define such terms as "reasonable time", "psychiatric record" and "medial record", items critical to the implementation of House Bill 1287. The Maryland Hospital Association, he added, has endorsed these procedures and they will be sent to hospitals throughout the state. Mr. Morgan noted that a copy had been sent to

the Licensing and Certification Section of the Department of Health and Mental Hygiene but that a reply had not been received. A copy was also sent to the Medical Chirurgical Faculty of Maryland who also have not responded as of yet.

Mr. Morgan stated that the Association had also sent out a survey on access rights of the person in interest. The responses which they received will be made available to the Commission.

Mr. Clinton referred to the section in House Bill 1287 excluding "legally disabled" persons from the right of access and asked if the Association had defined this term. Mr. Morgan replied that his understanding of the term was that it pertained to physically or mentally impaired individuals as deemed by a court of law. Discussion ensued as to whether a physical impairment should render an individual incapable of accessing his own records.

Mr. Zee asked Mr. Morgan if the guidelines of the Medical Records Association addressed the categories of people who can access their records. Mr. Morgan replied that the Association feels that the law is fairly clear and they have tried to amplify the law. They have focused on defining terms and clarifying the issues relating to minors who can consent to treatment of certain specified conditions. He added that suggested forms were also being included.

Mr. Zee asked if there would be acceptance of the guidelines put out by the Association. Mr. Morgan replied affirmatively, noting that Association guidelines in other areas had been well accepted in the past.

In response to Senator Hickman, Mr. Morgan explained that the Association exists on both the state and national levels. It is comprised of Registered Record Administrators (RRAs) and Accredited Records Technicians (ARTs); there is also an associate membership for non-accredited workers. Every hospital medical record department, Mr. Morgan added, must have someone who is an ART or RRA by virtue of the Joint Commission on Accreditation Guidelines and Federal Medicare and Medicaid program requirements.

Senator Hickman asked if the four state psychiatric hospitals have staff members who belong to the Association. Mr. Morgan replied that they should have at least one

member. He noted that Ms. Ruth Gilmer, a state medical record consultant to all state facilities, is a member of the Association.

Mr. E. Roy Shawn asked Mr. Morgan if Anne Arundel General Hospital had responded to the survey sent out by the Information Practices Commission. Mr. Morgan replied that it had not, and explained that the Maryland Hospital Association had asked private hospitals to defer responding to the survey. Mr. Dennis Hanratty explained that the Maryland Hospital Association had expressed concerns about the workload that the survey would impose on non-state institutions.

Mr. Hanratty asked if Mr. Morgan was satisfied with existing current provisions regarding mental health records. Mr. Morgan replied that he could not speak for the Association, but felt that based on his experience at Anne Arundel General Hospital, current law was satisfactory. He had found that the biggest area of concern regarding psychological records involved patient access to qualitative statements about his condition. Personally, Mr. Morgan stated, there existed a need for a provision for non-interference in psychiatric information.

Mr. Drea stated that if the Commission liked the guidelines put out by the Association, it might decide to recommend their adoption as regulations by the Department of Health and Mental Hygiene. Mr. Morgan thought that the Association would view this possibility in a favorable manner. As far as he knew, the Department of Health and Mental Hygiene had decided not to promulgate regulations but instead would wait and see how the law was implemented by individual hospitals.

Mr. Drea referred to Senate Bill 1044 which states that the clinician can deny access only where there exists substantial risk of imminent psychological impairment or serious physical injury to the client. Mr. Drea observed that from a legal perspective, there existed a significant difference between House Bill 1287 and Senate Bill 1044 in the area of psychological records. House Bill 1287 places the specialist under no burden to permit access to psychological records to the person in interest. In contrast, Senate Bill 1044 would require the specialist to justify a decision to prevent disclosure. Mr. Drea asked Mr. Morgan for his opinion on this issue. Mr. Morgan

replied that in either case the in-between step exists and that the decision rests with the specialist himself; therefore, he would presumably be able to deny access.

Mr. Drea referred to the issue of redisclosure of information by recipients of data. This point is discussed in Senate Bill 1044 but omitted in House Bill 1287. He asked Mr. Morgan if he thought that this was a major gap in House Bill 1287. Mr. Morgan replied that he did and that he felt that he could speak for the Association on this point. The Association is very interested in this issue and would consider any appropriate legislation.. Mr. Morgan added that the issue of redisclosure and its ramifications is rarely considered by hospitals. He pointed out that the survey results illustrated the need to educate hospitals regarding guidelines that should be issued to recipients of data.

Mr. Clinton pointed out that Senate Bill 1044 would have allowed the client to inspect his record within 30 days of receipt of the request while House Bill 1287 states that inspection is to be allowed within a "reasonable time". He asked if the Medical Records Association had arrived at a specified time period. Mr. Morgan believed that the Association had decided on a maximum of 10 days (perhaps 15 days in exceptional cases) and that the Association had also distinguished between the in-house patient and the post-discharge requests.

Senator Hickman referred to the fact that while House Bill 1287 allows the patient to designate a third party to look at his psychological record, the bill does not prevent a patient to designate a third party to look at his records. Senator Hickman cited the case of the individual who is committed to an institution but does not belong there. Such a person both cannot see his own file or designate a third party to see it. Mr. Morgan replied that he did not think that there was anything prohibiting a patient from getting another medical opinion. This is the major safeguard insuring that a same person is not committed without cause or due to error.

Mr. Hanratty pointed out that in Senate Bill 1044, if the person in interest is not allowed direct access to his records, he is allowed to designate an independent

health professional to review the record. This right is not allowed in House Bill 1287. Mr. Morgan stated that it might be appropriate to amend House Bill 1287 to include such a statement.

Mr. Drea brought up the fact that some hospitals disclose personal information (name, address, medical history) to collection agencies and asked Mr. Morgan if he felt that this was necessary. He replied that insurance companies may have a need to know but added that a collection agency would presumably not need this information. Mr. Drea mentioned that if the patient was sued for nonpayment, some information would be needed to prove that the medical care had been provided. Mr. Morgan added that he could see where some people might need to be reminded about specific information regarding their hospital stay. In any event, Mr. Morgan concluded, any medical information revealed should only be general data.

There were no further questions for Mr. Morgan. Mr. Drea thanked him for coming and providing the Commission with additional information on the implementation of House Bill 1287.

The next report discussed concerned the record-keeping practices of the State Ethics Commission. Mr. Hanratty stated that examination of the State Ethics Commission might allow the Information Practices Commission to develop a standard by which to decide what data should be public information and what should be confidential. He explained that the Ethics Commission requires substantial financial disclosure. Those individuals defined as public officials are required to file a disclosure statement which is a public record. Anyone requesting to see a statement must sign a sheet providing his name and address, date of examination, name of subject, and whether the file was copied or examined. The subject of the record can be notified, upon request, regarding the names of all requestors of his file.

Mr. Clinton asked if members of the Governor's Information Practices Commission should file financial disclosure statements. Discussion ensued on this subject. Mr. Hanratty agreed to check on this issue.

Mr. Hanratty pointed out that the practices of the Ethics Commission might set an example for others. Individuals required to file disclosure statements are informed, when they file, that their records are public information. In response to Mr. Gardner, Mr. Hanratty stated that they are not informed on the form that they can request to be notified if someone inspects their record.

Mr. Hanratty stated that the major question regarding the State Ethics Commission revolved around whether or not this information should be public information. Mr. Heckrotte, who was unable to attend the meeting, had asked Mr. Hanratty to express his opinion that the information should not be collected at all and, if collected, should be accorded a confidential status. Discussion followed on this issue. Commission members in attendence generally felt that there was a definite need for disclosure requirements and that this data should be open for public inspection. Mr. Drea concluded that the issue had really already been decided by the General Assembly.

Mr. Hanratty noted that the draft report suggests that agencies might ask two questions in determining their record-keeping practices: 1) Is there a public interest to be served by the collection or disclosure of the information? and 2) Are the collection or disclosure requirements reasonable? Mr. Hanratty felt that the State Ethics Commission met these guidelines. He expressed the view that these questions could also be used to evaluate other agencies.

The Commission then examined the Workmen's Compensation Commission Report. Mr. Hanratty stated that a considerable amount of sensitive data is collected by Workmen's Compensation Commission. He directed the attention of the members to Page 3 of the report, indicating that the existing statute is rather ambiguous concerning the disclosure of information to third parties. The general practice of the Commission is to allow individuals to examine Commission files. The requestor need not justify his right of access; the requestor also is permitted to peruse the entire file. However, Mr. Hanratty noted, if Workmen's Compensation Commission receives a call from an organization requesting information on several people, the information will not be provided. He added that he did not know what would happen if the organization sent a representative

to the Workmen's Compensation office to examine the files. He felt that they would probably be denied but was not sure upon what basis the denial would be made.

Mr. Hanratty stated that he had two major problems with the Workmen's Compensation Commission. First of all, given the sensitive character of the data collected by the Commission, a good case could be made for assigning such information a confidential status. Second, there did not appear to be a uniform standard used by the Commission to determine who shall be granted access to data. Mr. Hanratty suggested that InformationPractices Commission members consider recommending adjustments in the governing statute. He also felt that as an interim and more immediate measure, the Workmen's Compensation Commission should contact the Attorney General's office requesting an explanation of the statute and then develop appropriate regulations. Mr. Gardner stated that he felt that the need to disclose Workmen's Compensation information should be well defined and relatively narrow. Mr. Hanratty agreed.

Mr. Drea pointed out that the ambiguity of the statute was most probably the cause of this problem. The Public Information Act, he added, didn't exempt the type of records held by Workmen's Compensation. Mr. Hanratty explained that the statute governing the records of the Workmen's Compensation Committee had been in effect since the 1950's but the Commission has not yet requested clarification from the Attorney General. Mr. Tynes pointed out that the State Accident Fund collects data similar to that of the Workmen's Compensation Commission but noted that the data of the Fund is considered to be confidential.

Mr. Hanratty added that it was his impression that the Secretary-Director of Administration of the Workmen's Compensation Commission would have no objection to a statute restricting the availability of Commission information. Mr. Drea suggested that such a statute could be written to allow appropriate access to insurance companies and employers. Senator Hickman felt that any person authorized by the claimant should also be granted the right to examine the record.

Mr. Zee brought up the point that the Workmen's COmpensation Commission operates very much like a court. Court records are public records and he suggested that

perhaps Commission records should not be treated any differently. Mr. Hanratty replied that a differentiation could be made between information such as name and amount awarded, and detailed medical information which may not come out in court. The first type of information could be released while the second type could be maintained as confidential.

The next meeting was scheduled for June 22, 1981. Mr. Drea stated that he would be unable to attend and that Mr. Clinton would be Acting Chairman. Mr. Hanratty asked if there were any objections to sending the reports that had been discussed to the departmental liaisons. The members has no objections.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

ARTHUR S. DREA, JR.
CHAIRMAN

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MINUTES OF THE GOVERNOR'S INFORMATION PRACTICES COMMISSION-JUNE 22, 1981

The meeting of the Governor's Information Practices Commission was held on June 22, 1981. Members in attendence were: Mr. John Clinton, Acting Chairman; Mr. Judson P. Garrett, Senator Timothy Hickman, and Delegate Nancy Kopp.

The first part of the meeting was devoted to bringing Mr. Garrett, newly appointed to the Commission, up to date on recent activities.

The meeting of the Commission held at the Motor Vehicle Administration (MVA) in Glen Burnie was reviewed. Mr. Dennis Hanratty noted that a copy of the minutes provided by MVA and a copy of the minutes taken by the Commission staff had been sent to Commission members. After discussion, it was decided that a letter would be sent to MVA summarizing the points that were made in the meeting along with a copy of the Commission's version of the minutes.

Mr. Hanratty explained that after draft reports had been discussed among Commission members, they were being sent to the appropriate state agency. The reports have been accompanied by a letter requesting that any inaccuracies be corrected. Mr. Hanratty stated that to date he has received a response only from the Department of Education. Commission members decided that a more explicit letter should accompany the reports, stating that the Commission assumes there are no inaccuracies unless a response is received by a specified date.

Mr. Hanratty returned to the discussion of the meeting with MVA and expressed his

feeling that MVA had virtually conceded all of the points made in the report. In addition, he thought that a few other issues came to light that had not been discussed in the report. One of these, Mr. Hanratty noted, was the fact that Medical Advisory Board records turned over to the courts became the temporary property of the courts and are treated as public information. Discussion followed on other aspects of the meeting, including the following:

1) The expungement policy of MVA.

2) The practice of MVA in selling lists.

3) The lack of notification to individuals regarding the right to be removed from such lists.

4) The absence of a security risk analysis.

5) The lack of security at court terminals handling MVA records.

Delegate Kopp asked if any of the draft reports had been adjusted. Mr. Hanratty stated that they had not. He explained the process that he has used to gather information and compile it into reports. Any changes, he stated, will be incorporated into the final report.

Mr. Hanratty noted that he had found that federal information practices requirements imposed on state agencies are quite varied. For example, the Department of Human Resources operates under strict federal requirements prohibiting disclosure but limited regulations governing access to the person in interest. The Department of Education, on the other hand, is affected by detailed federal regulations pertaining to access. Discussion followed regarding whether federal regulations relating to state human services record-keeping practices were intended to limit access to the person in interest or whether they were just silent on the subject. The question was raised whether the Commission had the authority to expand upon federal regulations. Mr. Garrett thought the original intention of the federal government was to limit the ability of the person in interest to examine human service records. Mr. Hanratty concluded that unless a specific information practice issue is covered by federal regulation, the larger state agencies do not seem to have a policy one way or the

other.

Mr. Garrett asked about the stamp, "Working Papers-Not for Public Dissemination", used to mark draft reports. He felt that such a practice was not in keeping with the Public Information Act and that it would be difficult to deny access if someone requested a copy of a report. In discussion, it became evident that the meaning of the stamp was not to deny access to any reports but to insure that the reports were not disseminated to the public until they were determined to be factually accurate. Commission members agreed that this stamp should be modified to read "Working Papers-Subject to Revision."

Senator Hickman expressed the concern that the Commission has not yet asked agencies for a catalog of information systems or shown them a model draft of a privacy act. He felt that agency reactions would be essential before the Commission considers drafting an omnibus act. He also felt that their reactions would be vital is assisting the decision of the Commission in deciding whether to recommend an omnibus act or to suggest legislation in specific areas. Mr. Hanratty replied that in his informal discussions with agency officials, he had encountered objections to only two of the "Issues Regarding Privacy" contained in the Commission's Interim Report: disclosure logs and the catalog of record systems. The fear of most agencies, he explained, is that such measures would cause enormous paperwork requirements without producing concomitant benefits. Mr. Garrett suggested that part of the burden that agencies may anticipate is really already there, since by statute, records retention schedules are presently required from each agency. Mr. Hanratty observed however, that the information contained in these schedules is limited and not as extensive as would be required for a catalog of record systems.

Mr. Clinton asked Mr. Hanratty for his thoughts regarding the usefulness of a catalog of record systems. Mr. Hanratty stated that he had not yet formed a definite opinion on the subject. Recalling the testimony of the two representatives of the Office of Management and Budget at the Commission's April 27, 1981 meeting, he noted that the federal experience indicated that few members of the public referred to the

records system catalogs found in the Federal Register when requesting materials. Thus, it might be possible to dispense with the publication requirement. He felt that the catalog itself is a good practice for agencies as a management tool in making officials sit down and acknowledge records that they are keeping. The catalog would also be helpful, Mr. Hanratty suggested, if there were an overseeing body in charge of information practices.

Regarding Senator Hickman's point about the Commission obtaining a catalog of record systems from the various agencies, Mr. Hanratty noted that to a certain extent the draft reports themselves provide such a catalog. He added, however, that there have been significant variations in agency responses. Some agencies have provided an extensive breakdown of their record systems, while others have lumped various systems together by division.

Discussion followed concerning those agencies that have not been reviewed by the Commission. The lack of response of the Department of Health and Mental Hygiene was brought up. Delegate Kopp and Mr. Garrett offered to speak with Secretary Charles Buck about the overdue input from the Department.. Mr. Hanratty explained that considerable difficulty had also been encountered in obtaining copies of forms available to private collection agents at the University of Maryland Hospital.

Mr. Clinton opened discussion of the Regional Planning Council Report. Mr. Hanratty said that the Regional Planning Council has only one program-related record system-that pertaining to participants in the Section 8 housing program. Data pertaining to this program is forwarded to the Council from the individual counties. The Council noted that any requests for access or disclosure are referred to the county where the original form is kept. Mr. Garrett asked if such a practice was compatible with the Public Information Act. Mr. Hanratty replied that that was probably not the case, since the Council becomes a de facto custodian of the information. The Regional Planning Council told Mr. Hanratty that they have never had any requests from third parties not authorized to examine the data.

Discussion then turned to the subject of the Public Information Act. Mr. Garrett asked if the Commission was asking for procedures or policies that agencies have drawn up to implement the Public Information Act. Mr. Hanratty replied that a model regulation had been designed by the Attorney General's Office and was being used by many agencies. Mr. Hanratty noted, however, that few agencies provided any specificity in these regulations in identifying how particular record systems are handled. Mr. Garrett felt that such practices do not constitute compliance with the requirements of the Act. Another issue mentioned by Mr. Garrett was the cost of copying charged under the Public Information Act. He stated that fees are often used to discourage applicants from obtaining public information. Mr. Hanratty recounted the case of Mr. Lee Hoshall who was quoted a fee by the Baltimore City Police Department of $1,787 for 600 pages.

Returning to the Regional Planning Council report, Mr. Hanratty stated that the Section 8 regulations promulgated by the federal government appeared to contain no references to information practices. Thus, he thought that state and local agencies were free to develop appropriate procedures on their own. Mr. Garrett expressed the opinion that it was too much to expect Mr. Hanratty to find all federal regulations governing each agency. He suggested that the legal counsel for each agency be contacted and asked to provide these in writing. Delegate Kopp added that this should be done even if Mr. Hanratty researches the regulations himself.

The Commission then turned its attention to the draft report examining the record-keeping practices of the Maryland Automobile Insurance Fund (MAIF). Mr. Hanratty explained that the situation at MAIF illustrates a generic problem. Unless there is a section of the Code or a federal regulation stating that records are confidential or unless records are specifically excepted in the Public Information Act, then the data held by a state agency is public information. There are a number of systems, Mr. Hanratty asserted, that consequently fall between the cracks. In Mr. Hanratty's opinion, the Public Information Act mandates the disclosure of a considerable amount of personally identifiable data that is sensitive and should be confidential.

Mr. Garrett proposed that the most that could be done now would be to identify the systems that concern the Commission and see if they lend themselves to general classification. The Commission could then determine the most appropriate means to address this problem.

Discussion ensued on the type of data collected by MAIF and possible reasons justifying the public character of the data. Mr. Garrett suggested that perhaps MAIF data should be public to ensure that the agency is performing its functions in an appropriate manner. Mr. Hanratty disagreed, asserting that such an approach could also be used to require public inspection of other types of records, such as human services data.

Mr. Clinton asked about the security of the claims systems records. Mr. Hanratty replied that the response of MAIF indicated that there did not exist any general security provisions in the manual portion of the claims record system, where the most sensitive data is maintained.

Mr. Clinton referred to the statement in the report that the MAIF applicant is not aware of the public status of his records. Mr. Hanratty asserted that this is a problem in many agencies. Discussion followed on the right of a citizen to be informed about both the uses of the data he provides to the government and the confidential or non-confidential status assigned to that data.

The next meeting was scheduled for July 6, 1981.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

July 28, 1981

OFFICIAL

MINUTES-Meeting of the Governor's Information Practices Commission of July 6, 1981.

The Governor's Information Practices Commission meeting was held on July 6, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. John A. Clinton; Mr. Robin J. Zee; Mr. Donald Tynes, Sr.; Delegate Nancy Kopp; Senator Timothy R. Hickman; and Mr. Albert J. Gardner, Jr.

A tentative schedule of reports to be discussed at the next meetings was disseminated along with minutes from the meetings of June 8 and June 22, 1981, and a report on the Public Information Act. The minutes from the meeting of May 26th were adopted as official by Commission members.

Mr. Drea noted that two large departments remained to be covered: Health and Mental Hygiene and Public Safety and Correctional Services. He enlisted the assistance of Commission members in getting the input required from these agencies. Delegate Kopp replied that both she and Mr. Judson P. Garrett had spoken with the Secretary of the Department of Health and Mental Hygiene, Mr. Charles R. Buck, and that Mr. Buck professed to have no knowledge of the situation.

The first report discussed examined on the Department of Human Resources. Mr. Dennis Hanratty stated that the report was provided according to the responses from

three principal divisions of the Department of Human Resources. He noted that information had just been received for several smaller programs not included in the report and that this would be added later.

Mr. Hanratty informed Commission members that he had become convinced that the most important factor influencing the record-keeping practices of state agencies, particularly the larger agencies, is the nature of relevant federal regulations. If the federal information practices regulations are fairly general in character, he explained, the state policies generally follow suit. As an example, Mr. Hanratty noted the Department of Education-Division of Special Education, which operates under extensive federal information practices requirements. As a consequence, the division at the state level is quite aware of information practices at the local level. In contrast, the Department of Human Resources does not need to comply with as strict a set of federal information practices regulations. In particular, the Department is not required to monitor the record-keeping practices at the local level.

For example, Mr. Hanratty elaborated, representatives at the state level indicated that local social service agencies are responsible for determining appropriate levels of security. However, state representatives seemed unaware of what specific security measures had been adopted.

Discussion followed on the confusion which has always existed as to whether the local social service agency belongs to the county or to the state. The Montgomery County offices, Delegate Kopp stated, are the only ones being funded by both the county and state.

Senator Hickman related a conversation he had concerning security with a supervisor in a local branch office. Senator Hickman was told that the terminal used to

obtain Unemployment Insurance information was located in the waiting room but was turned away from the client. He also discovered that the password had not been changed in two years.

Mr. Drea stated that even though some confusion exists as to whether authority rests with the state or county, the Commission could certainly recommend that a uniform security policy be adopted. Delegate Kopp indicated that she would like to hear any objections from the local officials regarding issues raised in the draft report. Discussion ensued on whether the draft report should be sent to local agency heads to obtain their reactions.

Mr. Hanratty interjected that it was his impression that the Department of Human Resources believed that it has a state-wide privacy regulation. The problem was that when compared to the information practices of the Division of Special Education, those of Human Resources appeared insufficient. Although the Department of Human Resources' regulations in the area of restricting access of data to third persons are extensive, there was nothing regarding access to the person in interest. Mr. Hanratty added that it seemed that the department is unaware of information practices at the local offices.

Senator Hickman suggested that, ultimately, responsibility for security should rest with the custodian of the data base. Mr. Drea added that the Public Information Act requires that every agency name a records custodian and wondered how this has been handled by Human Resources.

The Commission should also be cognizant, Mr. Hanratty stated, that current Congressional activity could affect the record-keeping practices of State agencies. If programs are eliminated and put into a block grant fashion, then corresponding regulations of those programs would also be eliminated. In some areas, he elaborated,

the State hasn't promulgated as detailed regulations as the federal regulations. Mr. Clinton wondered if the role of the Commission would change if this happened, and asked if there would be a greater responsibility on the Commission to fill the gap. Mr. Zee noted that the loss of federal funding may result in looser control because the individuals who used to perform monitoring responsibilities can no longer be hired. When money is limited, priorities often shift, he concluded.

In the discussion that followed it was suggested that the Commission could issue general guidelines requiring each agency to establish policies in specified areas. Compliance could be monitored by the legislative auditors. It was decided that the Governor's Office in Washington, D.C. would be contacted and asked to keep the Commission staff informed on the status of federally funded programs. In this manner, the Commission could evaluate the extent to which it may need to recommend measures to fill any gaps.

Discussion then ensued regarding the various components of the Department of Human Resources. Mr. Hanratty noted that the Social Services Administration collects sensitive information, frequently from sources other than the subject of the record. Although the Social Services Administration operates under explicit COMAR regulations in the area of disclosure of information, no similar regulations are in effect regarding the issue of the access rights of the person in interest.

A second major issue, Mr. Hanratty explained, is the lack of awareness on the part of state officials with respect to security procedures at the local level.

In comparison to the situation found in the Social Services Administration, the Income Maintenance Administration does have a policy concerning access to records by the person in interest. First of all, the person in interest must have a specific reason for desiring to examine his file. Second, the Income Maintenance

Administration will permit the person in interest to examine only those parts of his file pertaining to his request. Finally, medical and psychological data will not be released.

Mr. Hanratty stated that officials in the Income Maintenance Administration were unaware of security measures enacted at the local level and agreed to obtain this information for the Commission.

Mr. Hanratty indicated that the record-keeping practices of the Employment Security Administration presented far fewer concerns to the Commission staff than was the case of either the Social Services or Income Maintenance Administrations. However, he suggested that clarification is needed from the Employment Security Administration regarding the access rights of the person in interest to medical and psychological information.

Mr. Clinton inquired as to who was responsible for gathering information on the Project Home form and also to what degree the information is available to the person in interest. Mr. Hanratty replied that he could not provide answers to either question, as representatives from the Social Services Administration did not attend his meeting with officials at the Department of Human Resources.

Mr. Hanratty summarized his findings that security of information and access to the person in interest were the major problem areas regarding the record-keeping practices of the Department. Third party disclosure restrictions were adequately covered. Delegate Kopp expressed the opinion that if security was weak, stringent disclosure measures became less meaningful.

Discussion followed on whether a meeting with Department officials would be beneficial. Mr. Hanratty did not feel that there was anyone at the Department who

could present the Commission with a comprehensive overview of current practices. Senator Hickman felt that the agency officials need to be involved and that their support would have to be enlisted if an omnibus privacy bill was to be recommended by the Commission. Mr. Zee agreed with this point. Commission members decided to send a copy of the report to Mr. Luther Starnes, to the Secretary of the Department, and to other pertinent officials, highlighting the concerns of the Commission. A request for a response within two weeks would be included. Then, Mr. Drea suggested, if a meeting was felt to be useful, one could be arranged. Delegate Kopp asked that the letter be quite explicit.and that Mr. Hanratty reiterate his concerns about questions that were not answered at his meeting with the Department.

Discussion ensued on the need to review all reports on the record-keeping practices of state agencies by October in order to have time to prepare an omnibus bill, amendments, or changes in regulations. Mr. Drea felt that the best contribution of the Commission might be a thorough review of existing practices and a comprehensive report with specific recommendations. Senator Hickman disagreed, stating that this would be only a halfway measure. He felt that at the very least, general legal requirements should be established.

Mr. Hanratty next discussed the report concerning the Department of Personnel. He explained that personnel files were maintained both at the Department of Personnel and also at individual agencies. Indeed, several personnel files may exist within one department.

Mr. Hanratty stated that requirements of the Equal Employment Opportunity Commission (EEOC) affect what information is collected by the Department of Personnel. Basically, EEOC guidelines state that unless some item is directly related to an occupational purpose, then it should not be collected in a form visible to the screening officer. Mr. Hanratty expressed a concern that all applicants were required to supply

a driver's license number on the State personnel application form. If a personnel officer obtained a driving record, he would have much the same information that was restricted under EEOC guidelines (e.g. race, sex, date of birth, etc.)

Mr. Tynes added that although the application form was not sent to the hiring agency, many agencies use the same form in their interview process.

Discussion focused on whether the request for a driver's license number was necessary and who should be required to supply it. Mr. Tynes stated that the Department of Personnel had been considering changing this to ask-"do you have a driver's license?" Then, if the qualifications standard required a license, it could be checked in these circumstances.

Mr. Hanratty noted that though he did not check every personnel office in State government, he had come across some application forms that appeared to conflict with EEOC guidelines. Mr. Zee suggested that the Forms Committee might be informed of the Commission's concern over the lack of a standardized application form.

Mr. Hanratty took up discussion of the Data Processing Division of the Department of Personnel. This division includes the legislature in the category of "duly elected and appointed officials who supervise the work of executive branch employees"; as a consequence, therefore, information is released to members of the legislature upon request. Mr. Hanratty noted, however, that the Administrative Services Division does not include legislators in this category and thus routinely denies access. Mr. Drea stated that he did not think that members of the legislature were meant to be included in this language. Mr. Hanratty noted that this issue had never been formally addressed by the Attorney General's Office. Mr. Hanratty added that a prior opinion of the Attorney General indicated that legislative auditors could be permitted access to personnel files if access was necessary in order to perform a statutory duty. Thus, it could

be that members of a legislative committee charged with departmental oversight responsibilities might argue that access to specified personnel files was a necessary aspect of their oversight function.

Delegate Kopp said that it was difficult to imagine when a member of the legislature would need access to an individual state employee's personnel file. Mr. Tynes noted that the Department of Personnel had received several inquiries for specific information from legislators concerning an employee and that the Department indicated that information would be supplied if the employee signed a release. Mr. Drea did not see how anyone could get around the requirement "duly elected and appointed officials who supervise" the work of executive branch employees. This, he felt, would restrict it to the legislator's personal staff.

In response to Mr. Zee, Mr. Tynes explained that files maintained at the Department of Personnel contained the original appointment and any promotion actions. Agency files were usually more extensive and would include such items as disciplinary actions. A file within a division may contain even more information, such as documentation of sick leave abuses. Discussion followed on the manual being prepared by the Department of Personnel that will discuss the type of information that should be in the file, what can be removed, and so forth.

Mr. Drea inquired as to the custodian of personnel records that were maintained in agencies or divisions rather than the Department of Personnel. Mr. Tynes thought that the appointed authority or the personnel chief of the agency would be the official custodian.

The Commission discussed the fact that letters of reference are removed from the employee's file before he is provided access to it. It was noted that an employee is not told that letters of reference are removed before he examines his file; the

employee is only informed of this fact if he inquires. It was suggested that a log could be kept indicating what, if anything, had been removed and why it was removed. Commission members discussed the pros and cons of confidentiality of letters of reference.

Delegate Kopp stated that she would like to know what information is in personnel files and to determine whether there should be a clear rationale and written directives governing such information. She whould also like to know the basis on which information is kept in the Department of Personnel. Mr. Drea asked Mr. Tynes to check into this.

Mr. Clinton reminded the Commission that a security risk analysis had been conducted at the Annapolis and Baltimore Data Centers. The data collected by the Data Processing Division of the Department of Personnel was maintained at these facilities. Mr. Clinton asked that this fact be noted in the final report.

Mr. Hanratty moved on to discuss the State Retirement System. He identified two existent problems: 1) medical data provided by physicians was not available to the person in interest; and 2) most of the sensitive data maintained by the system is disclosable under Article 76-A. He noted that the public character of retirement data was of considerable concern to the Retirement System itself.

Mr. Hanratty explained that Senate Bill 52 (introduced in the 1981 General Assembly) would have limited the amount of information available to the public. Data would be restricted during the lifetime of the member or retiree to the person in interest or his supervisor. After the death of the member, it would be available to beneficiaries and claimants and representatives of the beneficiaries' estates.

Delegate Kopp asked if Senate Bill 52 would permit information to be available

to an individual who had been formerly married to the member or retiree. Mr. Hanratty thought not. Mr. Drea added that it could be obtained through a court order in this situation.

Mr. Drea expressed his belief that an argument could be made that no retirement information should be disclosable. Discussion followed on the respective amount of contributions provided by the State and the employee.

Mr. Hanratty introduced the final section to be discussed concerning the State Accident Fund. The major problem with the Fund, he stated, is that it has routinely been denying requests for data without apparent statutory authority to do so. Mr. Hanratty added that the supervising attorney to the Fund stated that information maintained was accessible to the best of his knowledge. Discussion focused on the difficulty that State agencies encountered when trying to obtain information from the State Accident Fund. Mr. Zee recounted an incident involving a former employee of his department. After being denied access to the information, he had requested to see the regulation or statute allowing the denial and has yet to receive a response.

The meeting concluded with a discussion of House Bill 1287. It was noted that medical records in facilities other than hospitals were not covered by this bill.

The next meeting was scheduled for July 20, 1981.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

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August 3, 1981

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Minutes-Governor's Information Practices Commission Meeting-July 20, 1981

The meeting of the Governor's Information Practices Commission was held on July 20, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. Robin J. Zee, Mr. Donald Tynes, Sr., Mr. John A. Clinton, Delegate Nancy Kopp, Mr. Albert J. Gardner, Mr. Wayne Heckrotte, Mr. Judson P. Garrett, and Mr. E. Roy Shawn.

The minutes from the June 8 and June 22 meetings were adopted by Commission members as final.

Mr. Dennis Hanratty brought Commission members up to date on the responses received by the staff. Agencies which still remain to be discussed include: Licensing and Regulation, Health and Mental Hygiene, the Central Collection Unit and the Office on Aging. Mr. Hanratty noted that 85% of the necessary data had been received from the Department of Public Safety and Correctional Services and that the response to an additional request for information from the State Police was the only item lacking.

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Discussion followed on how to obtain cooperation from the Department of Health and Mental Hygiene, the largest agency which has not yet responded to the inquiries of the Commission. Commission members decided that, since the Secretary had been contacted by several Commission members concerning this problem, a letter would be sent to the Governor. This letter would state that the Commission would be unable to complete its work due to the lack of cooperation from Health and Mental Hygiene. A copy of the letter would also be sent to the Secretary.

The first report discussed concerned the Department of Agriculture. Ms. Thea Cunningham listed the general observations of the staff which were discussed in the report:

1. The amount of personal information collected by various sections of the Department varies considerably (i.e., some collect only name and address, while others collect more extensive personal information).

2. All sections of the Department permit the person in interest to access his records but he is not informed in any formal manner of this fact nor of the fact that information that he supplies is considered to be public information.

3. The records of the Department are disclosable under the Public Information Act. However, the Pesticide Applicator's Law Section stated that investigative reports are not disclosed. It is questionable whether this is a legitimate non-disclosure.

4. Should all other personally identifiable information collected by the Department continue to be considered disclosable under the Public Information Act?

Delegate Kopp questioned whether inquiries had been directed to the Secretary about the variety of information collected by the different sections. Ms. Cunningham replied negatively.

Mr. Garrett asked if there were copies of any divisional policies on disclosure. Ms. Cunningham replied that, although several sections had indicated that they adhered to departmental policy regarding disclosure, the liaison in the department stated that such a policy did not exist.

Mr. Tynes inquired as to whether the sections had indicated the typical recipients of disseminated information. Ms. Cunningham stated that most of the sections had said that they received few requests for information.

The second report discussed concerned the Public Information Act (PIA). Mr. Hanratty explained that he had based the report on:

1. Testimony from witnesses at the Commission's March 16 Public Hearing.
2. Supporting documents submitted to the Commission staff by these witnesses.
3. Responses from State executive branch agencies to questions regarding measures developed to respond to requests under the PIA.

Mr. Hanratty stated that he had found that the PIA works well. Although he found no evidence that State agencies were not complying with the provisions of the Act, he had encountered several problems with the Act.

The first problem, Mr. Hanratty explained, is that there is no definite time period by which the agency has to respond to a request for information under the PIA. Mr. Hanratty referred to the case of Mr. Lee David Hoshall. Mr. Hoshall had testified before the Commission that a records request he had submitted to the Baltimore City Government had been ignored for seven months. However, Mr. Hanratty stated, he found no evidence to suggest that State agencies are failing to comply in a timely fashion. He suggested that this may be a consequence of the fact that, unlike municipalities and counties, State agencies also operate under a Citizens Response Plan.

A second issue which Mr. Hanratty discussed was the cost charged the requestor to obtain copies of documents under the PIA. Mr. Hanratty explained that the Act is unclear as to what should be included in the charges: the copying fee, administrative costs to search for the material, costs involved in separating disclosable from non-disclosable information, and so forth. Mr. Hanratty cited an Attorney General's Opinion of 1974 which suggested that fees of various kinds involved in responding to requests under the PIA may be passed along to the requestor.

Mr. Hanratty stated he had found that most state agencies do not seem to typically pass along administrative fees to the requestor.

Mr. Hanratty noted three current agency practices which appeared to be inconsistent with the Public Information Act:

1. Requiring the requestor to justify a reason for the request.
2. Denying requests due to a lack of personnel.
3. Requiring the individual to produce information that was beyond his capacity to produce.

Another issue which needs clarification, Mr. Hanratty explained, is the expression "letter of reference". Letters of reference are not disclosable under the PIA. There is no definition of this term in the PIA but evidence had been submitted to the Commission indicating that some records custodians may deny unsolicited letters or comments.

In addition, Mr. Hanratty noted, the term "sociological data" needs clarification. Sociological data is prohibited from disclosure in the PIA along with medical and psychological data. Mr. Hanratty referred to a sheet from the Division of Parole and Probation which had been issued to the Commission members. On the sheet, sociological information was divided into that which is non-confidential and sociological data which is confidential. Mr. Hanratty felt that this was inconsistant with the PIA. He also felt that, ultimately, sociological data could encompass everything and theoretically invalidate the Public Information Act.

Mr. Garrett suggested that the same kind of problem exists with psychological data. He thought that unless psychological data is gathered by a psychologist, it is not psychological data for the purposes of the Act. Mr. Garrett asked how the Federal Privacy Act interpreted this term. Mr. Hanratty replied that he did not know

but would find out. Discussion followed and several Commission members expressed surprise that the Attorney General's Office had not been asked for clarification on this issue.

A final point brought up by Mr. Hanratty was the Open Meetings Act. Mr. Robert Colborn, Administrator of the Division of State Documents, had suggested to Mr. Hanratty that there were problems in this area. Under the Open Meetings Act, the agency is required to publish the date, time and place of any meeting. Mr. Colborn felt that this information should also include the subject matter with some specificity. Secondly, Mr. Colborn felt that the requirement that notification be given to the news media or that notice be posted at a convenient public location was not necessarily effective.

Mr. Drea replied that he felt this issue was not really within the scope of the Commission because it did not deal with Information Practices. Mr. Drea observed that this issue was extremely controversial when passed, and the requirement was essentially a compromise.

Delegate Kopp noted that the report on the PIA related to the adequacy of the Act in achieving the purposes of public information. She felt that another important issue involved was that of integrating privacy concerns with public information. Delegate Kopp noted that the Commission was concerned with the question of what is personal versus what is public and that this might affect the Act.

Mr. Hanratty noted that a number of agencies perceived that they had been adversely affected by the Act because there are no sections excluding personal data maintained by some programs from disclosure. Mr. Garrett added that in the process of identifying the information which an agency feels should be confidential, the agency should also consider whether the information should even be collected.

Another area where problems are developing, he noted, is "commercial espionage". Corporate clients access public files to get information on how a competitor does business. Mr. Sweeney, Mr. Garrett stated, was finding that the State is being sued for allegedly disclosing confidential information under the PIA.

Mr. Drea added Mr. William J. Rubin, Chairman of the State Bar Administrative Law Section, had pointed out that, presently in Maryland, the tax court can require people to leave the courtroom at the request of the taxpayer. The reason is that the information is of such a technically sensitive nature that the person does not want potential competitors to be aware of it.

Discussion then focused on the fees charged by agencies to copy documents requested under the PIA. Mr. Gardner suggested that agencies consider the principal purpose behind the record request. If the request is to serve a private rather than public purpose, appropriate fees should be charged. Mr. Drea added that another way would be to establish one charge structure for the person in interest and another for third parties. Mr. Zee noted that the Archives charge ancestor hunters but researchers are not charged because research is the purpose for which the Archives exist.

Mr. Zee asked if Mr. Hanratty felt that high fees were being used by agencies to discourage requests. Mr. Hanratty replied that he found that State agencies are trying to comply with the Act and in fact, most charge minimal fees to copy documents.

Delegate Kopp asked if the law provides for an appeal of the agency decision not to release a document under PIA. Mr. Hanratty replied that the only option available to the requestor would be to seek relief in court.

Discussion followed on the need for a time limit for the initial reply when a request is received. Mr. Garrett suggested that what other states have done could be reviewed. Delegate Kopp felt that a mediation board to handle extreme situations might be beneficial. Mr. Hanratty agreed. Mr. Garrett noted that there are punitive damages now except when the Attorney General's Office has advised the agency that the information is not disclosable. Mr. Drea suggested that the Commission might consider a decision time period of thirty days with the right to extend for an additional thirty days, with the permission of the requestor or for a valid reason.

The next report discussed was that concerning the Human Relations Commission. Mr. Drea indicated that responses were of such a high quality that Mr. Hanratty felt it would be sufficient to merely copy the reply of the Human Relations Commission. Mr. Garrett suggested that the quality of this response should be noted as an example in the letter to the Governor concerning the Department of Health and Mental Hygiene. Mr. Drea agreed.

The final report discussed was the Department of Economic and Community Development Report. Mr. Hanratty delineated the issues of concern to him. He noted that a common thread running through the report is the fact that the Department collects a great deal of financial data. Most components of the Department, Mr. Hanratty said, do not disclose financial and commercial data. Mr. Hanratty questioned, however, whether there is a statutory basis for such a policy. The position of the Department's counsel is that records of the Department are generally disclosable under the Public Information Act.

Mr. Hanratty cited Section 3(c)(v) which prevents the disclosure of confidential commercial or financial data. The custodian must decide: 1) Is the data commercial or financial? and 2) Is it confidential? He noted that though the Commission may be

able to benefit by examining the federal experience in this regard, as the financial and commercial section of the Federal Freedom of Information Act (FOIA) is quite similar to the PIA. Federal courts have interpreted commercial data to include rates and skills of supervisory personnel. Mr. Hanratty suggested that the most difficult issue involves determining what type of commercial and financial data is confidential. It would appear the records custodians must ask the following questions in determining whether or not to disclose such data: 1) Will disclosure adversely affect the Government's ability to collect similar information in the future? 2) Will disclosure cause substantial harm to the competitive position of the firm? and 3) What are the customary industry-wide practices regarding the handling of this type of data?

Mr. Hanratty stated that it is clear that some of the data in the Department, such as directory information about individuals participating in various programs, is disclosable. He noted, however, that even the Department is unclear about whether the commercial or financial data maintained by its various programs is confidential. Departmental officials are leaning towards adopting a policy that would distinguish between information pertaining to borrowers and that provided by lenders. Under this plan, lender information would be confidential, while borrower information would be disclosable.

Mr. Zee brought up the example of a small business trying to get established versus a large business which the state is trying to attract to Maryland. The State wants the latter and the firm may decide to relocate elsewhere if the State has a policy of disclosing commercial and financial data. Delegate Kopp noted that the same might apply to a small business.

Mr. Garrett stated that he felt that the Commission was getting too specific for a Public Information Act. He added that the Commission could not get so specific with the large number of agencies involved. The most that can be done in a

Public Information Act that applies to everyone, he asserted, would be develop certain general standards.

Discussion ensued on whether issues could be covered through legislation or rules and regulations. It was noted that the Commission had the option to decide whether to recommend an omnibus act or specific legislation. The point was made that if legislation was too specific, opposition might be greater.

Mr. Garrett noted that there is a provision in the PIA restricting the collection of information. Mr. Heckrotte added that the Legislative Auditors could examine the issue of data collection. Commission members discussed this issue. Mr. Drea stated that it could be tied in with the security risk analysis that the Commission would like to see done statewide. Mr. Hanratty felt, however, that every agency presently insists that all information it collects is relevant and necessary to perform assigned tasks. He was not sure what would be accomplished without explicit guidelines. It is difficult, he asserted, for the auditors to overrule psychologists, psychiatrists, etc., who might insist that certain pieces of sensitive data needed to be collected from recipients of government programs.

The meeting concluded and the next meeting was scheduled for August 3, 1981.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

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Minutes - Governor's Information Practices Commission - Meeting of August 3, 1981

The meeting of the Governor's Information Practices Commission was held August 3, 1981 in the House Constitutional and Administrative Law Committee Room. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. Robin J. Zee, Mr. Wayne Heckrotte, Mr. Albert J. Gardner, Jr., Mr. Donald Tynes, Sr., Mr. John A. Clinton, and Senator Timothy R. Hickman.

The minutes from the meeting of July 6, 1981 were approved as official and the minutes of the meeting held on July 20, 1981 were distributed to Commission members.

Mr. Drea read a copy of the letter that was sent to Governor Hughes concerning the lack of cooperation the Commission has received from the Department of Health and Mental Hygiene. A copy of the letter was also sent to Mr. Charles R. Buck, Jr., Secretary of the Department. Mr. Drea noted that Ms. Beatrice Weitzel, the Department's liaison with the Commission, had indicated that a partial response would be sent to the Commission staff on Friday, July 31, but as of Monday, August 3, nothing had been received.

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Mr. Drea discussed the problem that the staff had encountered with the University of Maryland. A survey was distributed to the University, he explained, requesting information on record-keeping practices. The replies were consolidated by the University and sent to the Commission. A sample reply was distributed to Commission members showing how responses had been grouped together. Mr. Drea pointed out that the consolidated replies were useless to the Commission staff. When the original responses were requested from the University, Mr. Drea added, the University replied that too much copying would be involved and that, in addition, some of the respondees were more candid than the University would have liked. A letter was sent to Dr. Brandt on July 13, 1981, requesting that the original responses be supplied to the Commission staff. As of August 3, 1981, no response had been received.

Discussion ensued on this issue. Mr. Zee and Mr. Tynes were asked to contact Dr. Brandt and bring this problem to his attention. (The materials requested have since been received by the Commission staff.)

Mr. Drea indicated that the schedule of the Commission needed to be reorganized. Seven reports remain to be discussed, Mr. Dennis Hanratty noted. Due to a lack of total responses from several agencies, completion of many of the reports had to be postponed. Because of this situation, it was decided that there would not be a meeting on August 17, 1981. The next meetings were scheduled for August 24, and August 31, 1981. There would not be a meeting on September 7, 1981.

The Addendum to the Human Resources Report was discussed by the Commission. Ms. Thea Cunningham explained that the Addendum concerned the record-keeping practices of the Maryland Energy Assistance Program, the Weatherization Program, the Training and Employment Office and the Bureau of Support Enforcement. All of these offices stated that the individual is allowed access to his records. The primary point of interest, Ms. Cunningham noted, is that several of the programs cited the Federal

Privacy Act as the governing authority for their collection or disclosure practices. As the Commission staff interpreted the Privacy Act, Ms. Cunningham added, it governs only records maintained by Federal agencies. A spokesman for the Department of Human Resources indicated that they had assumed that they were required to follow the provisions of the Privacy Act, since the program is federally funded. Ms. Cunningham stated that she had contacted the U.S. Department of Energy in Washington, D.C. which supplied the form used by the Weatherization Program. A spokesman for the Department of Energy stated that they had assumed that the Privacy Act governed the information practices of the states since the information was requested by a federal agency. The spokesman did not know where this requirement could be found in writing. Ms. Cunningham stated that she was unable to find anything in the Code of Federal Regulations concerning this requirement. These programs are covered, she added, by other federal requirements in the Code, as is the rest of the Department.

Mr. Drea suggested that the staff contact Mr. Dennis Sweeney and ask his advice on this issue. Mr. Hanratty noted that it seems as if the Department of Energy is requiring states to comply with the Federal Privacy Act when in fact they have no authority to do so. Mr. Heckrotte stated that perhaps the state is considered to be an agent of the federal agency. Mr. Hanratty responded that he found it curious that no other components of the Department of Human Resources, which are also funded by the federal government, cited the Privacy Act as regulating their activities.

The Commission then discussed the report examining the record-keeping practices of the Public Defender's Office. Ms. Cunningham explained that a great deal of personal information is collected on the applicant for appointed counsel. The Public Defender's Office stated that the client is allowed access to his file with the exception of psychiatric records. Mr. Drea asked how the passage of House Bill 1287 would affect this practice. Since hospitals are now required to supply the

individual with a summary of his psychiatric record, Mr. Drea noted, wouldn't this change the practice of the Public Defender's Office? The patient may not be able to obtain access to his psychiatric record in the Public Defender's Office, but he could then go the the facility and obtain a summary. Mr. Hanratty noted that the Public Defender's Office could send the individual directly to the facility. Mr. Drea suggested that it would be beneficial to find out if the Public Defender's Office was aware of the bill and its potential ramifications.

The final report discussed concerned the Department of Natural Resources. Mr. Hanratty noted that there were two areas that should be considered by the Commission: 1) the records of the Licensing and Consumer Services Section and 2) the personnel practices of the Natural Resources Police. The Licensing and Consumer Services Section, Mr. Hanratty explained, maintains approximately 900,000 records. The information contained in these records is, in many cases, confined to name, address and phone number. Other records, however, hold more extensive information such as birth date, age, height and eye color, length of residence in Maryland, and so forth. All of this information is disclosable under the Public Information Act, Mr. Hanratty noted. Licensees have no rights to prevent the dissemination of personal information and they are not notified concerning disclosures. The staff was informed by the Licensing and Consumer Services section that advertisers constitute the principal market for licensee computer lists. Advertisers are charged for computer time, paper, tapes and storage and 1¢ per page to cover expenses.

Mr. Hanratty compared the computer list contract used by the Department of Natural Resources with that used by the Motor Vehicle Administration (MVA). He noted that MVA's contract is much more restrictive. The purchaser must indicate the intended use of the information, restrictions are imposed on the reselling of information, recipients are prohibited from using the information for any mailing promoting the sale of real estate, insurance, involving sweepstakes or giveaways, and MVA can

prevent objectionable mailings. In addition, the individual may contact MVA and request that his name be deleted from the mailing list. These points are all absent in the Licensing and Consumer Services Contract.

Mr. Hanratty also pointed out that MVA may only sell lists if it approves of the purpose for which the list is to be used. There is no such statement in the regulations governing the Natural Resources Department. However, the legislature did impose a great amount of specificity in terms of information to be collected from licensees by the Licensing and Consumer Services Section.

Mr. Zee thought that both contracts were subject to the Attorney General's Office review and coordination. He noted that Mr. Hanratty would find similar variations between contracts when he examined the Department of Licensing and Regulation. Discussion ensued. The point was made that the Attorney General's Office determines the legal sufficiancy of contracts and is not concerned with the content of the contract.

Senator Hickman stated that it had occurred to him that the Commission could make recommendations to the Governor that he deem certain things be done by his cabinet agencies. Also, some of these changes could be accomplished by Executive Order or gubernatorial policy. Mr. Drea added that he had envisioned that most of the Commission's recommendations would take the form of suggested adoption of regulations by departments. The minority of the recommendations would involve legislation. Senator Hickman noted that there could be an Executive Order for Privacy and then a law could be passed a couple of years later.

Mr. Hanratty brought up the issue of standardization on personnel forms. He felt that a need existed to standardize personnel forms used throughout the state. Mr. Zee indicated that he had written to the State Records Administrator and will

transmit a copy of the minutes highlighting this point.

Discussion turned to the personnel practices of the Natural Resources Police Force. Mr. Hanratty noted that some of the information requested from applicants by the Force was quite detailed:

a. Marital Status: date of marriage/information on fiancee, who officiated, any separation/annulment/divorce and the reason

b. Financial Status: property owned, insurance premiums, mortgage payments, amount owed to creditors

c. Arrests: any detentions, tickets/parking violations of applicant or spouse

d. Medical Data: anyone in the family tested for nervous or mental disorder.

Mr. Hanratty added that this information is verified through the use of a polygraph. He stated that this seemed to be in direct violation of Article 100, Section 95-B which states that agencies cannot require the applicant or employee to submit to a polygraph as a condition of employment or continued employment.

In discussion of this application form, it was noted that it seemed to be an attempt to outdo the Maryland State Police. Mr. Heckrotte noted that the National Security Agency background investigation form was not as detailed as the form used by the Natural Resources Police.

Mr. Tynes stated that the Department of Personnel had reviewed the form and found it unacceptable. Many of the questions asked were not felt to be job related. Furthermore, Mr. Tynes added, statistics on minorities and females in the Natural Resources Police Force suggest that the form may discriminate against women and minorities. Senator Hickman noted that a constitutent had complained to him that he was told that one had to know someone in politics to be a Park Ranger.

Mr. Hanratty stated that he believed the application form to be internal to the Police Force and not a standard Departmental form.

Mr. Drea suggested that this form be discussed with the Department. Mr. Tynes was designated to contact the appropriate individual in the Department and inform him that this situation exists. In the discussion that followed, the point was made that the Commission would then have the option at the time of the final report of including or deleting the form. Mr. Hanratty felt that the form should be included in the final report and wondered how many applicants had been screened out in the past by the use of the form. Members expressed the feeling that 95% of the report would be ignored because of one sensational item. It was concluded that Mr. Tynes would contact Mr. Herbert Sachs, Director of Operations for the Department of Natural Resources, and that the Commission would decide whether to include this issue in the final report at a later date. Mr. Gardner noted that the objective should be to achieve a correction.

Mr. Drea noted that in his agency, Park Police applicants are informed that an FBI check will be done and fingerprints are taken. But detailed information to the extent requested by the Natural Resources Police Force was not required. Several Commission members expressed curiosity as to the types of information requested on the Maryland State Police Application Form.

Mr. Hanratty stated that another issue before the Commission concerned the directory type information (i.e. name, address, telephone number) collected by the various other sections of the Department of Natural Resources. Should this information continue to be disclosable under the Public Information Act or should restrictions be imposed on its dissemination? Mr. Hanratty thought that the Commission might consider the practice of local education agencies (LEAs) regarding directory information. Before releasing directory information, LEAs must inform parents at the